

DIVORCE
(including Dissolution of Civil Unions)
AND
ANNULMENT
INSTRUCTION PACKET



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DIVORCE (Including dissolution of Civil Unions)/ ANNULMENT INSTRUCTION PACKET

For purposes of this packet, whether you are married or have entered into a civil union, the act of dissolving the marriage or union will be referred to as **Divorce**.

Use the **Petition for Divorce/Annulment ONLY** when:

- You want a divorce or annulment

AND

- **MARRIAGES AND CIVIL UNIONS:** Either you or your spouse has resided (lived) in Delaware for at least 6 months immediately preceding filing for divorce or annulment; **OR** Either you or your spouse has been stationed in Delaware as a member of the military for at least 6 months immediately preceding filing for divorce or annulment

OR

- **CIVIL UNIONS ONLY:** you and your spouse do not live in Delaware and your state of residence does not allow civil unions to be dissolved **AND** your civil union was solemnized in Delaware.

Although this packet appears to discuss only what you need to do if you want to file a Petition for Divorce, you should also use this packet if you want to file a **Petition for Annulment**.

HOW TO USE THIS PACKET

This packet contains general information about the Divorce process and basic instructions on how to complete the Court forms featured in the **FORMS PACKET** which includes both blank forms for your completion as well as sample forms which have been filled out with generic information to help you better understand what information is requested by the Court.

You should read all of the instructions carefully **before** filing out any of the forms. All of the forms must be neatly filled out by hand or typed.

For word versions of these forms that can be completed electronically visit the Court's website at www.courts.delaware.gov/family

YOU MAY NOT NEED TO COMPLETE ALL OF THE SECTIONS IN THIS PACKET.

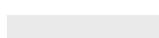
A paragraph at the beginning of each Section will describe who should complete that Section. **Read carefully** to determine if that Section applies to you. **ONLY** complete the sections that apply to you.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE.

For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to make sure that you know what you are supposed to do and when to do it.

SECTIONS WITH EMPHASIS

While all of the information within this packet is relevant and important, there are sections with added emphasis which will help guide you through the instruction packet.

 Sections that are **SHADED** indicate example text



The **EYE** icon indicates a section that should be read carefully



The **FILE FOLDER** icon indicates a document that must be filed



The **WRITING** icon is found on the **SAMPLE FORMS** indicating where you must input information on the forms you will file with the Court.



The **STOP** icon indicates either the end of a section or that items should be completed before continuing





TIPS AND REMINDERS

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The laws governing divorce and annulment are found in Title 13 of the Delaware Code. It will be helpful for you to read these statutes, so that you are aware of the law that the Court will be applying when deciding your case. The Delaware Code is available in the Family Court Resource Centers, public libraries throughout Delaware and on the internet at:
www.delcode.state.de.us
- 

BE AWARE that this packet does **NOT** address the issues of custody, visitation or child support. Speak with the staff at the Family Court Resource Centers or visit the Family Court website for information and packets addressing these issues. Additional resources will contain information specific to these types of filings as well as the forms required by the Court.
- 

Remember who is the Petitioner and who is the Respondent.

 - ◆ The **PETITIONER** is the person who files the Petition
 - ◆ The **RESPONDENT** is the person replying or responding to the **Petition**.
- 

Remember that properly completing the forms does not guarantee that the Court will give the Petitioner what they are asking for. It is up to the Petitioner and Respondent at the Court Hearing to prove why the Court should give the relief that has been requested.
- 

Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point during the process you are unsure about representing yourself, you should speak with an attorney.**
- 

Please remember that **COURT STAFF CAN NOT GIVE YOU LEGAL ADVICE**. While staff can tell you what options exist within Family Court's jurisdiction, we can not tell you which pleading you should file. Family Court's instruction packets as well as our FAQ's are the best information available from the Court regarding what a certain filing is, what to file, and how to file. If after reviewing the Court's resources, you still have questions, please contact an attorney.
- 

If you would like assistance in finding an attorney, you can call **Lawyer Referral Services** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. There is also an **Attorney Roster** available in the Resource Centers in each County. This roster will list a sample of attorneys practicing Family Law in Delaware and help you to understand the costs and areas in which they practice.
- 

Always bring your photo identification. The Court will only accept either State or Federally issued photo identification. Primary examples are drivers licenses, state issued ID cards or a passport.

MAINTAINING YOUR PAPERWORK

Please read and remember these important tips which will not only assist you with finding documentation in the future but also save you money.

REMEMBER

- ◆ Keep a copy of every document and Court paper.
- ◆ Keep all notes, documents and Court papers together and organized in a folder with the most recent papers on top
- ◆ Bring this folder with you each time you come to Court
- ◆ When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked in” Keep the clocked-in copy in your folder as proof of the time and date you filed each document.

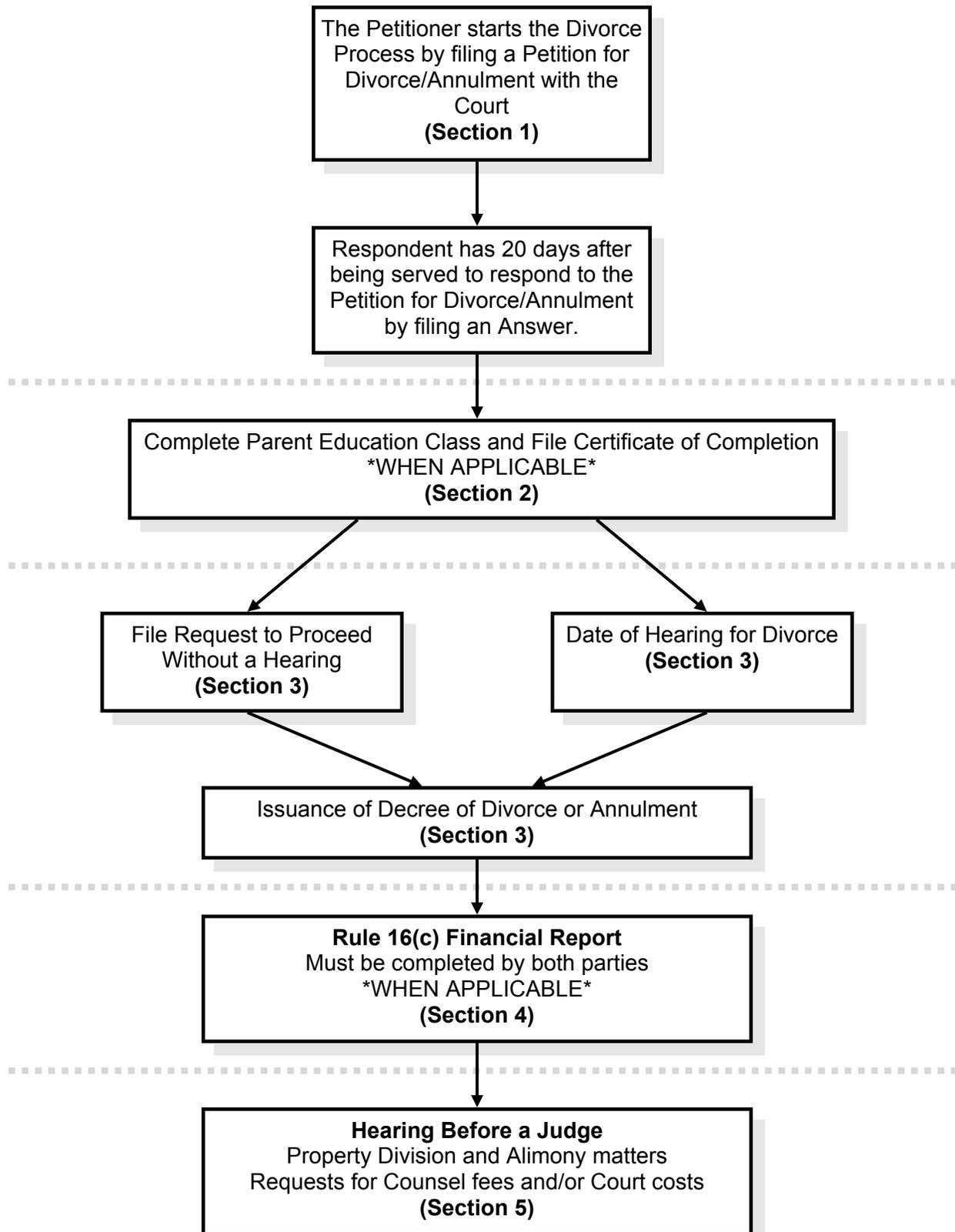


- ◆ Printing the required number of copies prior to coming to Court will save you money.

- ◆ When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase both small and medium stamped envelopes at the Resource Centers and the Court will mail your papers for you by regular mail. YOU are responsible for certified mail.



The Divorce Process



Section 1: Types of Divorce



There are different types of divorce in Delaware. Your divorce will be processed differently depending upon what type it is. Divorces can be **Contested** or **Uncontested**.

- ◆ If the Petition for Divorce/Annulment is contested, the matter will **automatically** be scheduled for a hearing. Contested essentially means that the Respondent challenges material information in the petition such as jurisdiction or the grounds for divorce.
- ◆ If the Respondent does not file an Answer within 20 days of receiving the Petition for Divorce/Annulment **OR** files an Answer agreeing with your request for a divorce, the petition is uncontested. If the petition is uncontested the Petitioner can **choose** what type of divorce proceeding he/she would like to have
 - The Petitioner may request that the Court decide the Petition for Divorce/Annulment based solely **on the papers** that are filed, without the parties appearing in Court for a hearing; **OR**
 - The Petitioner may choose to have the Court decide the Petition for Divorce/Annulment **after holding a hearing** which the Petitioner must attend and the Respondent may but is not required to, attend.

The Court will use the same standard for granting a divorce regardless of the type of divorce that you choose; however, different filing requirements exist for each type of divorce.

When completing the Petition for Divorce/Annulment, the Petitioner will be asked to pick which type of uncontested divorce he/she would like to get **IF** the petition is uncontested. Please read the information in this Instruction Packet carefully to help you determine which type of divorce you would like to choose.

You may change your mind regarding which type of divorce you would like after you file the Petition. However, you will need to be sure that you have met all of the necessary requirements for filing that type of divorce.



BE AWARE. If you choose to proceed on the papers, you will not have a hearing in front of a Commissioner to decide whether your divorce should be granted. However, **IF** you or your spouse request that the Court divide your marital property/debts and/or award alimony, you **MAY** still have a hearing in front of a Judge. The hearing in front of a Judge on these ancillary matters **CANNOT** be waived, unless the parties settle their case prior to the scheduled hearing.

Starting the Process



You **MUST** file the **ORIGINAL** and **ONE (1) COPY** of each form listed below with the Court

PLEASE REMOVE THE STAPLE FROM YOUR FORMS PACKET

- As each form is discussed, place the sample form and blank form side by side
- As you review the information about each form, look at the sample form and when you are comfortable with what information belongs in each section of the form, complete the blank form for submission to the Court.



Petition for Divorce/Annulment (*file original and one copy*).

- ◆ Although they are on the same petition form, Divorce and Annulment are separate actions. Generally, litigants choose to file either a Petition for Divorce or a Petition for Annulment. You should decide which petition is right for you. If you file a Petition for Divorce, Complete Section II on the petition. If you file a Petition for Annulment, complete Section III. If you choose to file both types of petitions, you must fill out both section II and III. You must also pay a filing fee for each petition.
- ◆ Either you or your spouse **MUST** have lived in Delaware for 6 consecutive months before you can file for divorce in this State. If neither of you have lived in Delaware for the past 6 months in a row, you should speak with an attorney to determine where is the best place to file for divorce.
 - OR, if you are filing for a civil union**
 - **IF** neither you or your spouse have ever lived in Delaware, and you are seeking to Divorce from a Civil Union solemnized in the State, you may file in Family Court in any County so long as your state of residence does not permit you to divorce.
 - **IF** neither you or your spouse currently live in Delaware and you are seeking a divorce from a civil union solemnized in this state, you must file in the county in which one or both of you last resided
- ◆ When filing in the Separation Date on your petition, write down the MONTH, DAY and YEAR that you separated.
- ◆ If your spouse is a citizen of another country or has lived in another country in the past two years, you must list the address of the embassy for that country. **BE AWARE...** possession of a United States green card does not make a person a citizen of the United States of America. Even if your spouse has a green card, you must list the embassy for the country where he/she is still a citizen.
- ◆ Before the Court will grant your divorce, you must demonstrate (indicate) that your marriage/civil union is irretrievably broken **AND** that reconciliation with your spouse is not probable by checking **BOTH** the appropriate boxes on the petition. You must check **both boxes** before the Court will grant

your divorce. You must also check at least one of the reasons why your marriage/civil union is irretrievably broken.

- ◆ Ancillary matters are actions that are dependent on the divorce action. In other words, the Court cannot consider these matters apart from a Petition for Divorce/Annulment. If you want the Court to grant you a property division, alimony, court costs, attorney fees or any other ancillary relief allowed in Title 13, § 1507 (f), you must ask the Court to do so as part of the divorce proceeding **before the divorce decree is entered**.
- ◆ Please note that you can only request to change **YOUR** name. You may not request to change your spouse's name. You may only change your name to your maiden name or other former name.
- ◆ The Petition for Divorce/Annulment must be notarized by a notary public or authorized court staff. **DO NOT** sign your petition until you are in the presence of a notary.



The Separation Date that you list on the Petition for Divorce/Annulment is VERY IMPORTANT.

Court staff will use this date to determine when your petition can be decided by a Commissioner. Once you have finished filling out your petition, write down the Separation Date that you listed in your petition in the appropriate space on the next page. Calculate 6 months from the date and write it in the appropriate space on the next page. The second date is the **earliest** you can expect the Court to decide your petition unless you have filed on the grounds of misconduct or have filed for an annulment.

SEPARATION DATE ON MY PETITION:	6 MONTHS FROM SEPARATION DATE:
_____ MONTH DAY YEAR	_____ MONTH DAY YEAR



Complete the **Petition for Divorce/Annulment (Form 442)** using the sample form from the Forms Packet as a reference.



Information Sheet form (*file original and one copy*)

- ◆ This form provides the Court with general information about the parties which allows the Court to adequately notify the parties about upcoming proceedings



Complete the **Information Sheet (Form 240)** using the sample form from the Forms

 **Division of Public Health/Vital Statistics form (*file original only*)**

- ◆ This form must be filled out in black ink or typed.
- ◆ This form will contain similar information to what was included on the Information Sheet. However, the information on this sheet is provided directly to the Division of Public Health and Vital Statistics for their records.



Complete the **Vital Statistics (Form 441)** using the sample form from the Forms Packet as a reference.

 **A certified copy OR the original of your Marriage Certificate/Certificate of Civil Union**

- ◆ You **MUST** file a **certified copy** of your marriage certificate/certificate of civil union **OR** the **original certificate**. Both a certified copy and original will bear an embossed seal or watermark signifying that it is an official copy. You may NOT file a photocopy of an original copy without prior permission pursuant to motion.
- ◆ A certified copy of your marriage certificate/certificate of civil union is available from the Division of Public Health and Vital Statistics in the state or jurisdiction where you entered into the marriage/civil union. You **CANNOT** obtain a copy of your marriage certificate/certificate of civil union at Family Court.



If you do not have either your original or a certified copy of your Marriage Certificate/Certificate of Civil Union, **BE SURE TO OBTAIN ONE BEFORE FILING WITH THE COURT.**

 **Request for Notice form (*file original and one copy*)**

- ◆ On this form you will tell the Court how you want to notify the Respondent about the Petition for Divorce/Annulment.
- ◆ If your spouse lives in Delaware and you know his/her address, you must ask the Court to personally serve him/her with a copy of the Petition. This means that someone will deliver the Petition to your spouse at his/her home or workplace.

- ◆ If you do not know where your spouse lives, you must ask the Court to publish **AT YOUR EXPENSE** notice of the petition in the newspaper. You must also complete an **Affidavit that a Party's Address is Unknown**. This Affidavit is included in the "Situational" forms in the next section.
- ◆ If your spouse does not live in Delaware, you must ask the Court to send notice to your spouse by certified mail **AND, AT YOUR EXPENSE**, publish notice of the petition in the newspaper.



Complete the **Request for Notice (Form 400)** using the sample form from the Forms Packet as a reference.

You have now reached the Situational Forms section.



Each form in this section should **ONLY** be completed if the situation described matches your situation. We suggest that you review the entire list of "Situational Forms" before filling any of them out. Once you've identified the forms that pertain to you, fill them out using the sample forms in the Forms Packet as a guide. Please read carefully and complete the forms that apply to you.

 **Affidavit of Children's Rights** (*File original and one copy*)

File this form IF: Petitioner and Respondent have a child or children in common who are under the age of 18

 **Separation Agreement** (*File original and one copy*)

File this form IF: you and your spouse have agreed on the terms of your divorce and you want the Court to be able to have the power to make you and your spouse follow your agreement by enforcing it

- ◆ A separation agreement is **NOT** a Court Form and is **NOT** included in the Forms Packet.
- ◆ To file a separation agreement, you must write down how you and your spouse are dividing your property and/or debts and any other agreements (such as custody, visitation, child support, alimony etc.) that you and your spouse have regarding the divorce.

- ◆ At the top of the document, write the case name and file number (this is in the top right hand corner of the Petition for Divorce/Annulment).
- ◆ Title the paper "Separation Agreement."
- ◆ **BOTH** you and your spouse **MUST** sign the Separation Agreement in the presence of a notary.
- ◆ When you file this document, you **MUST ALSO** file a Stipulation to incorporate the Separation Agreement.
- ◆ The Court will **NOT** review your agreement to decide if it is fair.

 **Stipulation to Incorporate the Separation Agreement Form**
(file original and one copy)

File this form IF: you have a Separation Agreement and you want the Court to be able to enforce the Separation Agreement.

- ◆ **BOTH** you and your spouse **MUST** sign the Stipulation to Incorporate the Separation Agreement in the presence of a notary.
- ◆ This is to be filed at the same time as your Separation Agreement

 **Affidavit that a Party's Address is Unknown Form** (file original and one copy)

File this form IF: You do not know where the Respondent lives

- ◆ You must tell the Court where to notify the Respondent of the Petition for Divorce/Annulment. If you do not know where the Respondent currently lives, you must **try to locate** him or her. Ways to do this include talking to your spouse's friends or relatives or checking the internet. If after looking for the Respondent you cannot find a current address, you must complete this form.
- ◆ **DO NOT COMPLETE** this form until you have made an effort to locate the Respondent

 **Affidavit that a Party's Social Security Number is Unknown form**
(file original and one copy)

File this form IF: You do not know the Respondent's social security number

- ◆ Delaware law requires that you provide the Court with both parties' social security numbers. If you do not know the Respondent's social security number, you must **try to locate** it. Ways to do this include talking to your spouse or looking in financial records. If after looking for the Respondent's social security number you cannot find it, you must complete this form.

- ◆ **Do not complete** this form until you have made an effort to locate the Respondent's social security number.

 **Waiver of Rights under the Servicemembers Civil Relief Act**
(file original and one copy)

File this form IF: The Respondent **IS** in the military.

- ◆ If your spouse is in the military, they will need to file either an Affidavit of Appearance, an Answer, or **YOU** will need to have them sign a Waiver of Rights under the Servicemembers Civil Relief Act. If your spouse does not file one of these documents or sign the waiver, **YOU** must file a **Motion to Appoint an Attorney** for the Respondent. You should start this process as soon as possible because it takes time and the Court will not schedule your divorce hearing until this process is complete.

 **Rule 16(c) Financial Report**

 **IF** you have requested any ancillary matters as part of your petition, you will be responsible for completing half of this form. This form is discussed in full in **Section 4** of this packet. It is recommended that you **wait until Section 4 to begin filling out this form.**



Now that you have identified what, if _____ any, situational forms relate to you, please complete them and submit them at the appropriate time as described by this _____ section

Forms should be filed at the Family Court in the county where either you or your spouse currently lives unless:

 Neither you or your spouse have ever lived in Delaware, and you are seeking to divorce from a civil union solemnized in the State, you may file in Family Court in any county if your state of residence does not permit you to divorce.

 Neither you or your spouse currently live in Delaware and you are seeking a divorce from a civil union solemnized in this state, you must file in the county in which one or both of you last resided

- ◆ In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court Building
- ◆ In New Castle County, you may file your papers at the Resource Center on Lower Level 1 (LL1) of the New Castle County Courthouse
- ◆ If you file your papers by mail, the addresses for each courthouse are available on the Family Court website at www.courts.delaware.gov/family.
- ◆ The Court **DOES NOT** accept filings that are faxed or emailed.



A filing fee is charged for each petition that is filed. The filing fee can differ depending on the type of petition you are filing. To find out what the filing fee is, you can look at the Family Court website or go to the Family Court Resource Centers located in each courthouse. The filing fee can be paid in cash, by credit card, by debit card, by check or by money order made payable to “Family Court.” If you are filing by mail, you may only pay by check or money order. **FAMILY COURT WILL NOT ACCEPT YOUR PAPERS WITHOUT THE FILING FEE.** There are additional costs if you must publish notice of this action. (See page 9 under the **Request for Notice form** for more information of when publication is necessary.)

Additional Instructions for Section 1



Your spouse has 20 days from the date of service (date that the Respondent receives the Petition for Divorce/Annulment or date of publication) to respond to your Petition for Divorce/Annulment. Your spouse may file an **Answer** to your Petition for Divorce/Annulment on which your spouse may **admit** or **deny** any of the statements that you made in your petition. On the Answer, your spouse may **counterclaim** for divorce or annulment. A counterclaim means that your spouse is filing his/her own petition for Divorce/Annulment. Your spouse may also request that the Court determine **ancillary matters**.



Instead of filing an Answer, your spouse may file an **Affidavit of Appearance and Waiver of Rights forms**. By filing an Affidavit of Appearance, your spouse is telling the Court that he/she does not need to be given notice of the Petition for Divorce/Annulment. In other words, they do not need to be served with a copy of the petition. The Waiver of Rights form tells the Court that your spouse does not want to file an Answer.



Once all of your forms from Section 1 have been filed with the Court, proceed to

Section 2
Section 2:
Parent Education Class

Only complete this section if you and your spouse are parents of a living child(ren) in common up to the age of 17.

If you and your spouse do not have children together up to the age of 17, continue on to Section 3.



You **MUST** file the certificate below:



Certificate(s) of Completion of Parent Education Class

All divorcing parents must take a Parent Education Class if they have children of the marriage up to the age of 17, unless the Court upon motion, determines that participation in the Course is deemed not necessary. A listing of approved classes is available at the Family Court Resource Centers.

You may motion the Court to approve a Parent Education Course that is not currently listed on the Court's approved course list. Wait until the Court grants approval of a non-approved class before participation because your request may be denied.

Once you have completed the Parent Education Class, a Certificate(s) of Completion of Parent Education Class will be given to you. You must file the **ORIGINAL** copy(ies) of the Certificate of Completion of Parent Education Class with the Family Court. **YOU CANNOT PROCEED WITH THE DIVORCE PROCESS UNTIL THE CERTIFICATE OF COMPLETION OF PARENT EDUCATION CLASS HAS BEEN FILED WITH THE COURT.**



Once you've reviewed all of Section 2 **and** your petition becomes **Trial Ready**, proceed to **Section 3**

Section 3: Petition is Trial-Ready



You cannot proceed with the divorce process until your Petition for Divorce/Annulment becomes **trial ready**. Your petition is trial ready when the following jurisdictional requirements have been met:

- ◆ You and your spouse have been **separated for at least 6 months**, unless you are filing on the grounds of misconduct, then you do not have to be separated for any specified period of time. However, be aware that you must prove any allegations of misconduct by presenting evidence of the misconduct to the Court before a divorce will be granted on this ground.
- ◆ Your spouse was **served** with the Petition for Divorce/Annulment.
- ◆ You have completed the required **Parent Education Classes** and filed the **ORIGINAL** Certificate of Completion with the Court.

Once your petition for Divorce/Annulment is trial-ready, you will receive a **Notice** from the Court telling you that your petition is trial-ready and that you can proceed with the divorce process. The type of notification that you will receive will depend upon what type of divorce proceeding you requested on your petition for Divorce/Annulment. The following pages will describe the type of notification you will receive and the steps that you must follow for each type of divorce proceeding. **Remember** that you can proceed with either type of uncontested divorce regardless of what you selected on your petition. If you change your mind regarding the type of divorce proceeding that you would like to file, be sure to submit the appropriate papers with the Court.

DIVORCE DECIDED ON THE PAPERS



If the petition is uncontested and you marked on your Petition for Divorce/Annulment that you wanted the Court to proceed without a hearing, solely on the papers, you will receive a **Notice of Trial-Readiness** telling you that your petition is trial-ready and that you have **20 days** to file the following forms.



Request to Proceed Without a Hearing (*file original and mail one copy to the Respondent*)

- ◆ You must file this form **within 20 days of the date on the Notice of Trial-Readiness** (not the date you received it in the mail). If you fail to file this request within the allotted time, your Petition for Divorce/Annulment will be scheduled for a hearing and you will have to appear in court to obtain your divorce.
- ◆ You must **attach a copy of the Notice of Trial-Readiness** to your Request to proceed Without a Hearing.
- ◆ You may **NOT** file this form **until** your Petition for Divorce/Annulment is

trial-ready and you **have received the Notice of Trial-Readiness**. If you file this form **BEFORE** you receive the Notice informing you that your petition is trial-ready, the matter will be scheduled for a hearing and you will have to appear in court to get your divorce or annulment.

- ◆ You **MUST** file this form with an **Affidavit in Support of the Request to Proceed Without a Hearing**.

 **Affidavit in Support of the Request to Proceed Without a Hearing** (*file original and mail one copy to the Respondent*)

- ◆ This document **MUST** be filed with the Request to Proceed Without a Hearing. On this document you are swearing that the information contained in the Petition for Divorce/Annulment and in the affidavit is true. The Court will rely on this information when making a determination regarding your divorce petition. Be accurate and honest.
- ◆ Only respond to question #5 if the Respondent **IS** in the military and has **NOT** responded **IN ANY WAY** to the Petition for Divorce/Annulment.
- ◆ Delaware law requires that you and your spouse have lived “separate and apart” for 30 days before the Court grants a divorce. You and your spouse may reside in the same house, **BUT, the Court cannot grant your Petition for Divorce if you and your spouse have occupied the same bedroom or had sexual relations with each other within the 30 DAYS prior to the Court granting your Divorce.** If you and your spouse have not lived separate and apart for the **past 30 days**, DO NOT file this affidavit. Failure to adhere to this requirement means that your divorce is invalid.

 Once you have properly filed the Request to Proceed Without a Hearing and the Affidavit in Support of the Request, all of your filings will be forwarded to a Commissioner. The Commissioner will decide whether to grant your petition for Divorce/Annulment based upon the information contained in the papers you have filed

If the Court **GRANTS** your Petition for Divorce/Annulment you will receive a copy of the Commissioner’s Order and the Decree of Divorce/Annulment in the mail. A copy of the Order and Decree will also be sent to the Respondent. If you or your spouse have requested that the Court retain jurisdiction over ancillary matters, you will also receive a paper telling you the ancillary matter’s that the Court will decide.

If the Court **DOES NOT GRANT** your divorce two things can happen.

- ◆ The Commissioner will deny your Petition for Divorce/Annulment if the statutory requirements for granting a divorce were not met and you and your spouse will continue to be married/united. **OR**
- ◆ The Commissioner can schedule a hearing to take testimony and other evidence from the parties to determine if the statutory requirements have been met. If your petition for Divorce/Annulment is scheduled for a hearing, you will be notified by mail of the time and date of your hearing.

DIVORCE DECIDED AT A HEARING



If the petition was uncontested and you marked on your Petition for Divorce/Annulment that you wanted to proceed with a hearing **OR** if the Respondent **contested** the divorce petition, you will receive a **Notice of Hearing** notifying you of the date of your hearing. You must come to Court on the day of your hearing for your Petition for Divorce/Annulment to be granted. If you fail to appear at the hearing, the Court may dismiss your petition and you will have to start the process over and pay the filing fee again.

If, **AFTER you have received a Notice of Hearing**, you change your mind and decide to proceed on the papers without having a hearing, you may file a Request to Proceed without a Hearing and the accompanying Affidavit anytime **at least 7 days prior** to the scheduled hearing. You must also file a copy of the **Notice of Hearing** that you received from the Court. You must **mail a copy** of the Request to Proceed without a Hearing to the other party and provide the Court with verification that you have done so. **BE AWARE**, if you file this request **WITHIN** the 7 days prior to your hearing, the Court **CANNOT** cancel your hearing and it **WILL BE HELD** as scheduled. **You will not receive any further notification from the Court that your hearing is taking place as scheduled.** If you fail to appear at the hearing your petition could be **dismissed** and you would have to start all over by filing a new petition and paying a new filing fee. Be very careful to file **at least 7 days prior** to the scheduled hearing date. Assistance in calculating the date you can file is available in the Resource Centers in each Courthouse.



Complete the following form and bring it to the Court with you on the day of your hearing.



Affidavit of Non-Military Service form

- ◆ **ONLY** complete this form if the Respondent is **NOT** in the military.



IF you have NOT requested ancillary relief, this is the **END of the Divorce Packet.**

IF you HAVE requested Ancillary Relief, begin section 4 immediately after you have received your Divorce Decree.

Section 4: PROPERTY DIVISION AND ALIMONY

**Begin Immediately After Receiving Your Divorce Decree.
Only Complete This Section If You Or Your Spouse Requested Property Division
And/Or Alimony.**

 The Rule 16(c) Financial Report is a form on which both spouses have to provide the Court and each other information about their finances. Both parties must complete the **SAME** form. Pay careful attention to the instructions so you understand the process, which is **different** than that for other forms. The two steps for completing the Rule 16 (c) Financial Report are described on the following pages.

The person who requested the Court make a decision on **ANY** of the following ancillary matters must complete the form **first**:

- ◆ Division of marital property;
- ◆ Division of marital debts; **AND/OR**
- ◆ Payments of alimony.

The person who completes the form **FIRST** is the “**Petitioner**” (for the purposes of completing this form **ONLY**), even if this person is not the person who filed the Petition for Divorce/Annulment. The Petitioner must complete all sections pertaining to the “Petitioner,” while the person who did **NOT** make such requests would be the “**Respondent**” and must complete all sections pertaining to the “Respondent.”

 If **BOTH** of you requested that the Court make a decision on ancillary matters, the person who filed the Petition for Divorce/Annulment is the “**Petitioner**” (for purposes of completing this form as well).

The entire form **MUST** be completed. Both parties must fill out the Rule 16 (c) Financial Report completely. Even if there is something that you do not want the other party to know you must put it on the form anyway or contact the Court by **Motion immediately** to tell the Court why you think that information should not be on the form. Please see the Motion Instruction Packet for more information about filing a Motion. The Court will decide if you must put the information on the Rule 16 (c) Financial Report. **DO NOT WAIT UNTIL YOUR 30 DAYS HAVE PASSED TO FILE YOUR MOTION WITH THE COURT.**

If you do not fill out the Rule 16 (c) Financial Report or if you hide property from your former spouse and the Court, the Court can impose the following **SANCTIONS** (penalties):

- ◆ Order you to pay your former spouse’s attorney fees;
- ◆ Accept your former spouse’s information on the form as true and ignore

- any information you may have; or
- ◆ Enter a **Default Judgment** or **Dismissal** against you.

If neither party files the Rule 16 (c) Financial Report in a timely manner, then the request for the Family Court to determine the ancillary matters will be dismissed.

STEP ONE

The person who is the Petitioner for the purposes of this form **has 30 days AFTER the date that the Divorce Decree is signed by a Commissioner** to complete the following papers:

Rule 16 (C) Financial Report form (*forward original to your spouse*)

- ◆ This is a very long form. Allow yourself enough time to fill in all the necessary information carefully and accurately.
- ◆ **REMEMBER**, only fill in the portions of the form that are labeled Petition (P).
- ◆ On the last page of the Rule 16 (c) Financial Report, you are asked to list the proposed division of property and debts. In other words, you tell the Court how you think the property and debts should be divided. If you do not think that there is enough room in the provided box, you may write in the box “see attached” and write how you think the property should be divided on a separate piece of paper.
- ◆ After the Petitioner completes the Rule 16 (c) Financial Report, he/she must sign it in the presence of a notary
- ◆ The Petitioner must forward the **ORIGINAL** notarized 16 (c) Financial Report to the Respondent (the other party) or the Respondent’s attorney (if there is one).
- ◆ Before forwarding the original Rule 16 (c) Financial Report, the Petitioner should make a **COPY** of the original and retain it for his/her records. This is **VERY IMPORTANT** in case the Respondent does not file the original with the Court.

Affidavit of Mailing form (*file original only*)

- ◆ **AFTER** the Petitioner forwards the original Rule 16(c) Financial Report to the Respondent, he/she must complete the Affidavit of Mailing swearing under oath that he/she mailed the original to the Respondent or the Respondent’s attorney, and file the Affidavit with the Court.

STEP TWO

The person who is the RESPONDENT for the purposes of this form has 30 days AFTER the date of mailing (look at postage date on the Rule 16 (c) Financial Report) to file the completed 16 (c) report:

- ◆ The Respondent must complete their portion and sign it in the presence of a notary
- ◆ The Respondent **MUST** file the **ORIGINAL** notarized Rule 16 (c) Financial Report with the Court **AND** forward a **copy** to the Petitioner or the Petitioner's Attorney (if there is one)

After the Respondent forwards a copy of the Rule 16 (c) Financial Report to the Petitioner, he/she must complete an Affidavit of Mailing swearing under oath that he/she mailed a copy to the Petitioner or the Petitioner's Attorney.

If one party does not file the Rule 16 (c) Financial Report, the Family Court may grant a **Default Judgment** or **Dismissal** against him/her. In other words, that party may lose. The Court may also impose the same penalties stated above for not completing the form. If your former spouse fails to file Rule 16 (c) Financial Report, you may be directed by the Court to file the following document. You may also be asked to submit a copy of the Rule 16 (c) Financial Report you filled out.

Form of Order (*file original only*)

- ◆ On this document, you tell the Judge what you would like him/her to order by writing a **proposed order** for the judge to sign. You must write down how you want the Court to divide your property/debts and/or how much alimony should be paid.
- ◆ Be specific in what you write because the judge may sign the Form of Order exactly how you have written it, making what you have written an **enforceable Court Order**.
- ◆ **DO NOT FILE THIS DOCUMENT UNTIL DIRECTED BY THE COURT TO DO SO.** This document is only filed **IF** your former spouse fails to file the Rule 16 (c) Financial Report in a timely manner
- ◆ This document is **NOT** found in the Forms Packet. It is available in the Resource Centers and on the Family Court Website.

If you have tried to finish the Rule 16 (c) Financial Report Form but you cannot, you may ask that the Court give you more time by filing a **Motion**. Motion forms are available in the Resource Centers. It is up to the Court to decide whether you will get more time and you must have a good reason for the request. Not completing the Rule 16 (c)

Financial Report because you did not feel like doing it or you did not find the time to complete it, is not a good reason and the Court probably will not give you more time.



When you have finished reviewing this section, continue on to SECTION 5 which describes the next events in the process.

Section 5: ANCILLARY HEARING WITH A JUDGE



If you or your former spouse requested that the Court determine **property division, alimony, counsel fees, court costs and/or any other ancillary relief allowed in Title 13, § 1507 (f)**, these matters will be scheduled for a hearing before a judge. The hearing will be scheduled **AFTER** the Rule 16(c) Financial Report is completed by both parties and filed with the Court. The Court will notify you by mail of the date of your hearing.

Depending on how complicated your case is, the Judge may schedule a **Pre-trial Conference**. The Court will notify you if a pre-trial conference will be held. You may also be required to submit additional information regarding your finances to the Court.

If you do not comply with the Court's request for additional information, the Court may impose the following **SANCTIONS** (penalties):

- ◆ Continue the hearing;
- ◆ Accept your former spouse's information as true and ignore any information you may have; or
- ◆ Order you to pay your former spouse's attorney fees; or
- ◆ Dismiss the case.



**This concludes the Divorce (including dissolution of civil union) and Annulment
Instruction Packet**
