



Starting A Divorce Action

1. WHAT IS A DIVORCE ACTION?

Divorce is a way to legally end your marriage. A Divorce Action is how you tell the Family Court that you want a divorce, why you want a divorce and if and how you want the Family Court to decide matters regarding your divorce.

2. DO I HAVE TO GO THROUGH THE COURT SYSTEM TO GET A DIVORCE?

Yes. You are not legally divorced until the Family Court issues you a **Divorce Decree** (a **Court Order**).

3. WHO CAN FILE FOR DIVORCE?

If you are legally married **AND** either you or your spouse has resided in Delaware for at least 6 months or has been stationed in Delaware as a member of the military for at least 6 months, you may file for divorce in the Family Court of the State of Delaware.

4. DO MY SPOUSE AND I HAVE TO BE SEPARATED BEFORE I FILE FOR DIVORCE?

Yes, unless you are filing for divorce on the grounds of misconduct (such as physical abuse, psychological abuse, infidelity, abandonment). You must be separated before you file for divorce. In order to be "separated" you and your spouse must not share the same bedroom and you must not have sexual relations, with the exception of reasonable attempts of getting back together. You still can be separated if you live in the same house so long as you do not share the same bedroom or do not have sexual relations with your spouse.

5. HOW LONG MUST I BE SEPARATED FROM MY SPOUSE BEFORE I CAN HAVE MY DIVORCE HEARING?

So long as you and your spouse are separated, you may file for Divorce. However, before the Family Court will schedule your Divorce Hearing,

Delaware law requires that you and your spouse be separated for at least **6 months**, unless you are requesting a divorce on the grounds of misconduct. If you are requesting a divorce on the grounds of misconduct, then you do not have to be separated for any specified period of time. Within **30 days** of your Divorce Hearing, you and your spouse may **NOT** have sexual relations or occupy the same bedroom.

6. DO I NEED A LAWYER TO GET A DIVORCE?

No. You may have a lawyer represent you but it is not required. However, Family Court strongly suggests that you hire a lawyer because you could lose your home, custody of your children or important rights if the Court rules against you.

7. HOW DO I FILE FOR DIVORCE?

You must file a **Petition for Divorce/Annulment** and other related papers. The **Petition for Divorce/Annulment** is a paper that you file to tell the Family Court that you want a divorce and why and to give the Court information about you, your spouse, your marriage, your separation date and your children (either born or adopted). To find out what you need to do to file for divorce, please review the divorce packet that applies to your situation.

8. WHERE DO I FILE FOR DIVORCE?

You must file for divorce in the County of Delaware in which either you or your spouse lives.

9. DOES MY SPOUSE HAVE TO BE NOTIFIED THAT I AM FILING FOR DIVORCE?

Yes. The U.S. and State Constitutions require that whenever a Petition is filed with the Court, the other person must be notified. For example, if your spouse files for divorce against you, then you must be notified so that you have an opportunity to tell your side of the story, if you so choose. This is called **due process**. The specific act of notifying your spouse is called **service of process**.