

INSTRUCTIONS FOR DOM. REL. FORM 20: COMPLAINT FOR ABSOLUTE DIVORCE

If you want the court to grant you a complete dissolution (ending) of a marriage, you asking the court to grant you an **absolute divorce**. After a court issues a **JUDGMENT OF ABSOLUTE DIVORCE**, you can remarry. If you are the woman, you can also request that the court restore your maiden name. There are two ways you can do this: (1) obtain the service of an attorney to handle your case; or (2) file the case yourself by using the DOM REL forms.

YOU MAY NEED AN ATTORNEY IF:

- ?? the case is contested and the other side has a lawyer
- ?? you can not locate the other side to serve him or her with your papers
- ?? either side has a house, a pension or a large amount of property or income. Even if it is a friendly divorce, you may want to talk to a lawyer before you sign any settlement papers or file anything in court.
- ?? you might lose custody of your children.
- ?? you think the court will need information that you cannot get.
- ?? you have been married for at least ten years.

There are **7** steps you must follow in order to do get an Absolute Divorce:

1. COMPLETE DOMESTIC RELATIONS QUESTIONNAIRE
2. FILE YOUR FORMS
3. PAY THE FILING FEE
4. SERVE YOUR PAPERS CORRECTLY
5. ANSWERING
6. REQUEST FOR MASTER'S HEARING
7. THE HEARING

STEP 1. COMPLETE DOMESTIC RELATIONS FORM 20

Use this form if you want a complete dissolution of your marriage. You must file a COMPLAINT FOR ABSOLUTE DIVORCE. This is done by filling out the Divorce Questionnaire which will generate all the forms you need to fill for your divorce. PLease note that o;n the Questionnaire you must check a ground for divorce and you should all grounds that apply. The grounds for an Absolute Divorce are:

Two-year Separation Generally, when you and your spouse have lived apart from each other for two-year without sexual relations and there is no reasonable hope of getting

back together (no reconciliation), then you can file this Complaint in court under this ground. There are some important things to remember: if you and your spouse lived together for any amount of time during the last two years, or if you have had sexual relations even once with your spouse during that time, or if you spent even one night under the same roof, you cannot get an absolute divorce based on a two-year separation. (For example, if you have been separated from your spouse for two years, but one night a year ago you had sexual relations with your spouse, then the law says you have only been separated for one year.)

Voluntary Separation You can get an absolute divorce on the grounds of voluntary separation if both you and your spouse agreed to separate at least one year (12 months) ago with the idea of ending your marriage, you have lived in separate homes without sexual relations for at least one year, and there is no reasonable hope of getting back together (reconciliation). This means that to get an absolute divorce based on voluntary separation, both you and your spouse had to want to end the marriage at least one year ago. If you left your spouse but your spouse did not want to leave, you cannot get a absolute divorce based on voluntary separation. (However, you could get an divorce based on a two-year separation if you remain apart for another year.)

Adultery Generally, when your spouse has had voluntary sexual relations with a person other than you, the lawful spouse, this is a basis for an absolute divorce. In this case you have to prove that your spouse committed the act of adultery. In order to prove adultery you have to prove disposition and opportunity. Disposition is when your spouse and someone else acted in a way that would lead you to believe that they committed the act of sexual intercourse. Opportunity is the time they had to commit the act. If you can prove these two elements, you can check off **Adultery** as a ground.

Actual Desertion In order to have actual desertion, you spouse must have left you, with the intention of ending the marriage. Your spouse must have left you for more than 12 month (without sexual relations), then you can ask the court for an absolute divorce base on actual desertion.

Constructive Desertion Generally, Constructive Desertion occurs when your spouse has made your home conditions impossible for you and your children to continue to live together in safety, with health and self-respect. If there is an intent to desert, then the court will presume actual desertion.

Criminal Conviction of a Felony or Misdemeanor-self evident.

Insanity-self evident.

STEP 2. FILING YOUR FORMS

Make 3 copies of Dom Rel 20.

File at the Clerk's Office, along with your other papers, on the first floor. In five days you can call the clerk to see if this motion has been granted. If it has not been granted, you must pay the filing fee before the court will do anything else with your papers.

You may want to consider filing for child support with Domestic Relations. This will provide you with an attorney only for child support.

Complete the following forms:

- ?? Civil - Domestic Case Information (DCI) Report
- ?? Complaint for Absolute Divorce - Dom Rel 20
- ?? Financial Statement (if asking for Child Support or Alimony) - Dom Rel 30/31

Make 3 copies of DCI Report, Complaint, Financial Statement.

FILE the original of the above forms at the Clerk's office. A filing fee will be required at this time unless it has been waived. (DCI Report, Complaint, Financial Statement)

If you plan to serve the other party out of state, ask the clerk for a summons for 60 days. If you plan to serve the other party out of the country, ask the clerk for a 90 day summons.

The court will issue a Writ of Summons which will be sent to your home in 5 - 10 days. You should receive 3 copies of this form; if you do not, then make 3 copies.

STEP 3. PAY THE FILING FEE

Payment of the filing fee is generally required. If you are requesting a waiver of prepayment of fees:

Complete: Motion for Waiver of Prepayment of Fees-Dom. Rel. 32 and attach

Financial Statement-Dom. Rel, 31

Take the completed document to the clerk of the Circuit Court.

STEP 4. SERVICE

SERVICE: It is very important that you do service correctly. If you do not, then the court may dismiss your case.

Attach the original copy of the summons to one copy of all of the forms that you filed with the court. (Summons, DCI Report, Petition, Financial Statement)

CHOOSE ONE OF THE FOLLOWING METHODS

- ?? Certified Mail, Restricted Delivery, Return Receipt Requested. Any adult over the age of 18, NOT YOU, may take the service package to the post office to mail it as above. Then that person must fill out an Affidavit of Service (Certified Mail) - Dom Rel 56. Once the post office has returned the green card, check the signature. If the signature is correct, attach the green card and a copy of the summons to the Affidavit of Service and FILE it at the Clerk's office-Room 105.
- ?? Sheriff. The Sheriff's office will deliver the service package and complete the Affidavit for a fee somewhere around \$35 or \$40.
- ?? Private Process by a Process Server. You can check in your phone book or with any local attorney to find a process server. For a fee this person will deliver the service package for you. You must get them to complete an Affidavit of Service (Private Process) - Dom Rel 55. Then, FILE the Affidavit with a copy of the summons attached at the Clerk's office-Room 105.
- ?? Private Process by a Friend. Any adult over the age of 18, NOT YOU, may hand deliver the service package to the opposing party. They may **not** leave the package on their doorstep, with a roommate or with a relative. The service package must be put in their hand. Then that person will complete an Affidavit of Service (Private Process) - Dom Rel 55. You must FILE the Affidavit of Service along with a copy of the summons at the Clerk's office.

STEP 5. ANSWERING

The other party has time to answer. If they do not answer in the correct amount of time, you may come back to ask for the Order of Default form. You must have done service correctly before this Order will be granted.

STEP 6. REQUEST FOR MASTER'S HEARING

The **Complaint for Absolute Divorce** will start the process moving in the court. Also, you should file a Request for Hearing so that a court date will be set.

STEP 7. THE HEARING

The court will set a hearing date and notify you by mail when and where to appear.

At the hearing for **Absolute Divorce**, you will need a **corroborative witness** at your divorce hearing. This could be a friend or relative who testifies with you and backs up

your story. The witness gives her testimony based on the facts she saw or heard herself. Her testimony cannot be based on information she only heard from other people, because witnesses in court must have personal knowledge of the facts to testify about them. The one important exception is that your witness can testify to what your spouse (but not you) has told her.

When you come to court you should have:

1. An original copy of your Marriage License
2. A witness that can verify how long and under what conditions you and your spouse separated
3. Blue Sheet (the clerks will give this to you)

If you have children, but no child support order:

- ?? Completed Child Support Guidelines Worksheet
- ?? Your last 3 pay stubs
- ?? Your last 2 tax returns

For a **Two-Year Separation**, your witness must testify from personal knowledge that you and your spouse have been separated for two years. She must also testify that there is no reasonable hope of getting back together (reconciliation). If at all possible, your witness should know and have talked with both you and your spouse. Your witness should be a frequent visitor in your house. If possible, you should not pick someone to be your witness whom your spouse dislikes. (For example, you should avoid using a new boyfriend as your corroborative witness.)

In the case of **Voluntary Separation**, you will also need a **corroborative witness** to testify that:

1. he or she knows you and your spouse;
2. that you both voluntarily agreed to separate;
3. that you have been separated for at least one year; and
4. that there is no reasonable hope of getting back together (reconciliation).

There is one exception to the requirement that the corroborative witness knows that you and your spouse voluntarily agreed to separate. If you and your spouse signed a **separation agreement, under oath (sworn)**, which says that you separated "mutually and voluntarily" as of such and such a date (at least a year ago), then your witness does not have to know it was voluntary. Even if you have a separation agreement that proves that your separation was mutual and voluntary, you will still need the witness to testify to the other requirements.

THE DIVORCE HEARING

WHAT HAPPENS AT THE HEARING FOR AN UNCONTESTED DIVORCE

The hearing for a non-contested divorce takes place before a master. A master is a lawyer that helps a judge decide a case. Your corroborative witness must go with you to the hearing. You should take copies of all the papers you have filed with the court, any other court orders you already have about custody, support, or property, and your separation agreement, if you have one (if you want it included in the divorce judgment).

COURTROOM DEMEANOR

While waiting for your case to be called, maintain proper courtroom demeanor. Do not eat, drink, smoke, or chew gum. If you must communicate, write notes- even soft talk can distract the master and interrupt the hearing that may be going on before you get your turn. Never argue with the master, or interrupt anyone else who is talking. You can emphasize or repeat anything you think it is important. Answer "yes" or "no" questions "Yes, Your Honor" and "No, Your Honor." Always thank the master at the conclusion of your case.

The first thing that the master will ask you is your name. You should stand up, introduce yourself and say "Good morning, my name is_ "I am the plaintiff, and I am representing myself for a divorce." This will let her know that you want a divorce and that you are not a lawyer.

The hearing will be recorded either by a court stenographer (person who records everything said in court) or by a tape recorder. The master or the clerk will swear you in and may take a few minutes to look over your divorce complaint. The master will then ask you questions.

The questions you will be asked will be simple and you should know the answers in advance. Try not to be nervous, but do not worry if you are. It is common for people to be nervous in front of a judge or master. You will be asked about your marriage, why you want a divorce and what you want (for example, custody, if it has not been decided previously). Then the master will decide the issue that you have raised.

It is important to know that you and your corroborative witness should be very business-like in front of the master or judge. You should try not to laugh or talk unnecessarily. The master wants to complete the hearing as quickly as possible (and so do you). The hearing should take approximately 10 minutes.

There are certain thing you must tell the master. They include the following:

- ? 1. Your name and where you live.
- ? 2. Your spouse's name and address (if you know).
- ? 3. When and where you were married.
- ? 4. Exactly when you separated from your spouse.
- ? 5. Names and ages of the children born to you and your spouse if any).
- ? 6. With whom the children are living if they are minors (under eighteen)
- ? 7. How long you have lived in Maryland.
- ? 8. State what you want (a divorce).

The following questions, with slight variations in wording, will usually be asked the plaintiff at the hearing. However, if you are *pro se*, it is a good idea to have a statement prepared giving all the necessary information in case the master doesn't ask the questions himself. Many *pro se litigants* will ask themselves the questions and the provide their own answers:

Here is a list of sample questions with answers in parentheses:

- 1. Please state your name and address.
- 2. How long have you been a resident of Maryland?
- 3. Has your residency been continuous? (Yes)
- 4. Did there come a time when you became married? (Yes)
- 5. To Whom?
- 6. When and where was that?
- 7. Can you identify this document? The marriage certificate is handed to you. (Yes, it is my marriage certificate, which I enter to the court as evidence).
- 8. Were there any children born of this marriage?
- 9. What are their names and ages?
- 10. Who has custody of the child?
- 11. When did you and your spouse separate?
- 12. Where were you living at the time of separation?
- 13. Who left?
- 14. Why did you separate? (We could not get along and agreed to go our separate ways).
- 15. Has this separation been voluntary, continuous, and uninterrupted for more than a year? (Yes).
- 16. During the time of separation did you and your spouse resume any cohabitation?(no)
- 17. Are there any property rights to be settled by the Court? (No).
- 18. Is there any reasonable hope or expectation for a reconciliation?(no)

19. Are you (or is your husband) a fit and proper person to have custody of your minor child? (Yes.)
 20. Have provisions been made for the support of your minor child? (Yes, my husband has agreed to pay me \$150 a week which complies with the minimum Maryland State Guidelines based upon our incomes).
 21. Can you identify this document? The Maryland Child Support Worksheet is handed to you. (Yes, this is the Maryland Child Support Worksheet that I completed previously, which I enter to the court as evidence.).
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THE WITNESS

You must have your corroborative witness back up what you say to prove your grounds for divorce. Your witness cannot say what you told her, but can say what she has seen and what your spouse told her. If you are seeking a divorce on the grounds of one-year voluntary separation, and you do not have a sworn separation agreement, your witness must testify that you and your spouse voluntarily agreed to separate and how she knows that fact. The witness verifies your residency, your date of separation, the fact that you and your spouse are no longer living together and cohabiting, that the separation has been voluntary and continuous, and that there is no hope for a reconciliation.

The witness is asked the following questions by the master, or you can ask the questions yourself:

22. Please state your name and address?
 23. How long have you known the plaintiff?
 24. Where does the plaintiff live?
 25. How long has the plaintiff been a resident of Maryland?
 26. Did there come a time when you learned that the parties separated?
 27. When and how did you learn about it? (They separated on May 1, 1994 and I witnessed him leaving the house with his suitcases when he was moving).
 28. Do you have occasion to visit the plaintiff?
 29. How often?
 30. Have you seen the defendant or any evidence of his living there?
 31. Do you feel that there is any hope for reconciliation? (No, there is no hope of reconciliation).
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CHOOSING A WITNESS

Your witness can be almost anyone: a friend, a parent, a neighbor, a relative, even your own grown children. Your witness should be someone who knows you and your situation well and, also, someone whom you can trust.

MARRIAGE CERTIFICATE

Don't forget to bring a certified copy of your marriage certificate with you to the hearing.

END OF HEARING

It is extremely important that neither the plaintiff nor the witness give any more information than is asked for. There have been many cases in which the divorce did not go through because people started to talk too much. Picture this" "Have you seen the defendant or any evidence of his living there?" (well, a lot of his clothes are still there. and his stereo. And I have seen him over there a couple of times. Just a couple of months ago, he was over having breakfast with Ann). An answer like that could cause the master to stop or rescind the divorce action. This does not mean that you should lie, which is perjury. Just be sure to answer the questions simply and directly.

HOW THE DECISION IS MADE

When a master holds the hearing, the master will make written recommendations to a judge who will make the final decision. The master may prepare the divorce judgment for you. Either orally at the hearing or later in writing, the master will tell you her recommendations. If you disagree with those recommendations, you can file a notice of intention to file exceptions (a specific list of thing with which you disagree) within five days after you get the master's recommendations. The master will the file a written report with her recommendations and send you a copy, and you can then file your exceptions within ten days of the day the recommendations were filed. There are other things you must do, such as get a transcript (typed copy of what was recorded at the hearing) within thirty days.

JUDGMENT

At your divorce hearing, you will give a copy of the written judgment that you have signed to the master unless you are told not to do so. A judge will review your case and then sign the written judgment you have submitted, unless there is a problem with it. The judgment states that you are divorced and what the judge has decided about the rights of you and your spouse in the divorce (for example, you are awarded custody, your spouse is awarded visitation, etc.). After the judge signs the judgment and gives it to the clerk, the judgment becomes final, and the clerk will send you a copy.

After your divorce hearing, you must fill out a blue vital statistics form the state uses to record all divorces. The form asks for your name, your spouse's name, your address, etc. If the master does not give you the form to fill out, you must go the clerk's office to fill out the form and give it back to the clerk. The clerk will certify your divorce and send your form the Bureau of Vital Statistics.

WHEN YOU CAN GET REMARRIED

It is best to wait thirty (30) days after the date of your divorce judgment before you marry someone else. If you wanted to, you could remarry when the judgment is signed. However, your divorce could be appealed by your spouse within thirty days after the judgment of divorce is filed with the clerk. If your spouse appeals the divorce, the court of Special Appeals (the next higher court) might rule that your divorce is invalid (not legal) for some reason. If that happened, you would still be married to your first spouse and your second marriage would not be valid.

OTHER COURT DOCUMENTS

In addition to this form you may also need to fill out a:

- Property Settlement Agreement;
- Statement of Marital and Non-Marital Property;
- Financial Statement if asking for alimony; and/or
- Financial Statement if asking for child support