

# **CHESAPEAKE CIRCUIT COURT**



## **Uncontested Divorce Procedures Manual**

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**Chesapeake Circuit Court  
Uncontested Divorce Procedures  
Table of Contents**

	Page #
Table of Contents.....	2
Outline of Procedures.....	3 – 5
<b>APPENDIX OF FORMS.....</b>	<b>6</b>
Form 1: Hearing Request .....	7
Form 2: Scheduling Notice .....	8
Form 3: Rejection Notice.....	9
Form 4: Correction Form .....	10
Form 5: Decree of Reference.....	11
Form 6: VS-4 Form.....	12
Form 7: Questions for Complainant.....	13
Form 8: Questions for the Witness .....	14
Contact Directory .....	15
Use of An Attorney Statement.....	16

# Chesapeake Circuit Court

## Uncontested Divorce Procedures

### 1. **Description Guidelines**

An uncontested divorce is one in which:

- a. The grounds for divorce is separation for the statutory period (no-fault), or a motion for a no-fault divorce will be made pursuant to Virginia Code § 20-121.02 and there are no issues in dispute concerning equitable distribution, spousal support or child support, custody and visitation, or
- b. All of the issues have been agreed to by the parties in a written stipulation agreement.

### 2. **Who Can Hear an Uncontested Divorce**

Both parties may elect to have the case heard by a divorce commissioner; or a party may request by motion that the matter be referred to a Divorce Commissioner; otherwise the divorce will be heard by a Judge.

- a. To have the case heard by a judge, the parties must comply with the requirements set out in this manual.
- b. To have the case heard by a commissioner, the parties must submit a **Decree of Reference (Form 5)** to the clerk's office.
  - i. If the defendant has made an appearance, the Decree of Reference shall be endorsed by all counsel of record and any pro se party or notice must be given as required by Supreme Court Rule 1:13.
  - ii. If the defendant has executed a waiver or failed to enter an appearance after proper service, the complainant may submit the decree of reference without defendant's endorsement

### 3. **Requirements to have uncontested divorce hearing before a judge**

- a. File and serve the Bill of Complaint.
- b. Wait until the time to answer has passed or the defendant has answered or filed a waiver.
- c. Request a hearing by filing in the Clerk's Office a **Hearing Request (Form 1)**. The moving party must send a copy of the Hearing Request to the other party or counsel.
- d. The following documents must be submitted with the Hearing Request:

- i. The original divorce decree signed by both parties, if required (see note). NOTE: The signature of a party who is legally entitled to notice is not required if the party is served with notice of the hearing and a copy of the proposed divorce decree.
  - ii. The original of any separation agreement; if applicable.
  - iii. Proof of service of the bill of complaint and/or waiver.
  - iv. An original, completed **VS –4 form (Form 6)**; and
  - v. A self-addressed, stamped envelope.
- d. When the Hearing Request is filed in the Clerk’s Office, the case will be **reviewed by a Staff Attorney**.
- i. If all requirements have been met, the Staff Attorney will mail a **Scheduling Notice (Form 2)** to the moving party. The **Scheduling Notice** will inform the party that the hearing request is approved. It will also inform the party of any additional requirements (original service return, etc.)
  - ii. If all requirements have not been met, the Staff Attorney will mail a **Notice of Non-Compliance (Form 3)** to the moving party. A **Checklist (Form 4)** will be attached, stating the reasons for the rejection and listing the required corrections. The corrections must be made and the necessary documents shall be submitted to the Clerk’s Office along with a self-addressed stamped envelope.
  - iii. Do not contact the Staff Attorneys by telephone. Communications with the Staff Attorneys must be in writing or by e-mail and are limited to the matters in the Checklist Form. The Staff Attorneys are not permitted to give legal advice.
- e. If depositions are intended to be used, the approval of a judge is required before a hearing will be permitted.

#### 4. **Procedure for Scheduling a hearing before a Judge**

The case can be scheduled for a hearing only if the Staff Attorney has mailed the moving party a **Scheduling Notice (Form 2)**. Within 21 days from the date of the **Scheduling Notice**, the moving party must call 382-3074 to schedule a hearing. Failure to contact the court within such 21-day period may result in having to resubmit another **Hearing Request (Form 1)** for further review before a trial date can be set.

#### 5. **Hearing before the judge**

- a. A continuance of the scheduled hearing must be approved by a judge and will not be granted except for good cause shown.
- b. Hearings will be set on Wednesday’s beginning at 11AM and the moving party must call 382-3074 to schedule a hearing date. The moving party and the witness must appear in person.
- c. Counsel or the party, if proceeding *pro se*, must present the evidence to prove the grounds for the divorce and any other relief that is sought. Form questions **Questions for**

**Complainant and Questions for the Witness (Forms 7 & 8)** have been approved by the Court.

d. No changes or corrections will be permitted at the hearing, other than a motion for a no-fault divorce pursuant to Virginia Code §20-121.02.

e. If required by law, the non-moving party must be served with notice of the hearing and a copy of the proposed divorce decree. Notice must be served 7 days prior to the hearing date; and a copy or the original of the proof of service must be filed at least 5 days prior to the hearing date. The original proof of service must be brought to the hearing if it is not filed earlier (Virginia Code § 20-99).

f. Generally, the final decree will be entered at the hearing. The Clerk's Office will provide certified copies following the hearing or will mail certified copies of the final decree if the parties provide a self-addressed stamped envelope.

## **6. Restoration of former name Incident to a Divorce**

Virginia Code § 20-121.4 provides that upon decreeing a divorce, a party who changed his or her name by reason of the marriage, may move the court to restore such party's former name or maiden name by a separate order meeting the requirements of § 8.01-217.

You may submit a properly completed typed order along with a \$21 clerk's recording fee payable to the circuit court clerk. This order may be obtained from the Clerk's Office of this Court. This order must be sent contemporaneously with the final divorce decree before the hearing.

## **7. Manual Updates**

The latest version of these procedures and forms will be posted on the Chesapeake Courts' web site when available and also may be picked up at the Circuit Court Clerk's Office.

# **Chesapeake Circuit Court**

## **Uncontested Divorce Procedures**

### **Appendix of Forms**

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

\_\_\_\_\_  
Complainant

v. In Chancery No.: CH \_\_\_\_\_

\_\_\_\_\_  
Defendant

Hearing Request

The undersigned party/counsel hereby requests that this matter be set for an uncontested divorce hearing before a judge. I certify that all issues are uncontested as required by the Court's procedures for these hearings. I am including or have previously filed the following documents:

- \_\_\_ Final Decree of Divorce
- \_\_\_ Original Separation Agreement, if applicable
- \_\_\_ Proof of Service of Bill of Complaint, and/or waiver
- \_\_\_ Original Completed VS-4 form
- \_\_\_ Identifying Information Addendum
- \_\_\_ Self-addressed stamped envelope
- \_\_\_ Other \_\_\_\_\_

I am the \_\_\_ Complainant, \_\_\_ Defendant, \_\_\_ Counsel for Complainant or \_\_\_ Counsel for Defendant.

VSB # if an attorney \_\_\_\_\_ Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Daytime Phone Number

Certificate

I certify that I mailed a true copy of the foregoing to \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_ by first class mail with postage affixed.

\_\_\_\_\_

Sign and print name

**FORM 2**

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE**

\_\_\_\_\_  
**Complainant**

**In Chancery No.**\_\_\_\_\_

v.

\_\_\_\_\_  
Defendant

**Scheduling Notice**

Your request for an uncontested divorce hearing is approved. No later than 21 days from the date of this notice you must call 382-3074 to schedule a hearing date and time.

You must bring a **WITNESS** to the hearing. And, in addition the following if checked:

\_\_\_\_ Original notice of hearing and entry of the final decree with a copy of the proposed Final Decree attached (Rule 1:13) and a dated certificate of mailing at the bottom. NOTE: The notice must be mailed at least 10 days prior to the hearing, and the original notice with certificate must be filed with the court at least 10 days prior to the hearing.

\_\_\_\_ Original proof of service made by a person authorized by Virginia Code § 8.01-293 of the notice of the hearing and entry of the final decree. NOTE: the notice must be served at least 10 days prior to the hearing, and the original return of service must be filed with the court at least 10 days prior to the hearing.

\_\_\_\_ Other\_\_\_\_\_

\_\_\_\_\_  
Staff Attorney

\_\_\_\_\_  
Date

\_\_\_\_ Copy for file

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

\_\_\_\_\_,  
Complainant

Vs

In Chancery No. \_\_\_\_\_

\_\_\_\_\_,  
Defendant

NOTICE OF NON-COMPLAINE

Your request for an uncontested divorce hearing cannot be processed at this time because you did not submit the required documents and/or they are not in proper form. The attached Checklist, Form 4, highlights the required changes. Additional changes required are itemized below.

Your request for an uncontested divorce hearing will be processed as soon as you re-submit to the Clerk’s Office, the Final Decree with all required changes, and any missing documents as noted, **together with a self-addressed stamped envelope**. If you disagree with any required change, you may file and notice a motion for a ruling from the Court, identifying the issue you would like the Court to rule on, and schedule it for hearing on the regular Motions docket. Briefs, if any, in support of your position should be submitted at least 15 days before the date the motion will be heard.

Additional changes required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Staff Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_ Copy for file

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

\_\_\_\_\_  
Complainant

v.

In Chancery No. \_\_\_\_\_

\_\_\_\_\_  
Defendant

DECREE OF REFERENCE

This cause came this day to be heard upon the Bill of Complaint, with process properly served upon the defendant.

The Court ORDERS that this cause is referred to \_\_\_\_\_ one of the Commissioners of this Court, who is directed to take testimony and report his findings to the Court pursuant to the General Chancery Order for such causes.

ENTER: \_\_\_\_\_

\_\_\_\_\_  
Judge

Endorsements:

\_\_\_\_\_  
Counsel for Complainant

\_\_\_\_\_  
Counsel for Defendant

\_\_\_ (Check if applicable)  
Submitted without defendant's endorsement.  
The defendant has executed a waiver or failed to enter an appearance after proper service.

**VS-4 - Report of Divorce or Annulment**

Note: An original of this form must be used. The form may be obtained from the Circuit Court Clerk's Office, Chancery Division, 307 Albemarle Drive, Suite 300A Chesapeake, VA 23322

**Chesapeake Circuit Court  
UNCONTESTED DIVORCE HEARINGS  
Questions for Complainant**

1. State your name.
2. State your address.
3. Are you married to \_\_\_\_\_?
4. Were you married on \_\_\_\_\_ in \_\_\_\_\_?
5. Are you and your spouse over 18?
6. Were you or your spouse residents and domiciliaries of Virginia for at least six months preceding the filing of this divorce?
  - a. (military members) Were you or your spouse stationed in or did you reside in Virginia for at least six months preceding the filing of this divorce?
7. Have either you or your spouse been incarcerated in a mental or penal institution at any time since the filing of this divorce?
8. Are you and your spouse mentally competent?
9. Have either you or your spouse been a member of the armed forces of the United States on active duty at any time since the filing of this divorce?
10. Did you and your spouse separate on \_\_\_\_\_?
11. When you and your spouse separated did one of you intend for the separation to be permanent?
  - a. If not, when did one of you form that intent?
12. Since the date of the separation, have you and your spouse lived separate and apart, without cohabitation and without interruption?
13. Are there any children born or adopted of the marriage? Are their names and ages:
14. Have you and your spouse entered into a written and signed property settlement agreement? Is this it?
15. Do you want the court to affirm, ratify and incorporate the property settlement agreement into the final divorce decree?
16. Is there a request to have a former name restored? What is it?
17. Do you want the court to grant you a divorce based upon the grounds of having lived separate and apart without cohabitation and without interruption for a period in excess of one year (six months)?

Chesapeake Circuit Court  
UNCONTESTED DIVORCE HEARINGS  
Questions for the Witness

**Note: The testimony of the moving party must be corroborated by a witness who is able to answer the following questions.**

1. State your name and address.
2. Do you know the parties in this case \_\_\_\_\_ and \_\_\_\_\_?
3. How do you know the complainant/defendant?
4. How long have you known the complainant/defendant?
5. Have they lived separate and apart and without cohabitation and interruption for one year/six months?

Ask witness to verify the information that the party has testified too.

### **Use of An Attorney**

Each party involved in a divorce matter is strongly encouraged to consult with an attorney so that the legal effects of the proceedings may be fully explained. While it is your right to proceed without an attorney, if you do so, you may forever, unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage. The Staff Attorneys and the Clerk's Office and judicial staff are not permitted to give legal advice.

