

Uncontested Divorce Booklet

For Uncontested Divorces Without Children Under 21

Instructions and Practice Forms



New York State Unified Court System

This instruction booklet and official divorce forms are FREE.
If you need additional forms, please go to www.nycourts.gov or www.nycourthelp.gov
or to your local Supreme Court Clerk's Office.

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Contents

Getting Started

Introduction:	4
Step 1: Opening Questions	7
• Age	7
• Residency	7
• Grounds for Divorce	8
Step 2: How Much Will It Cost Without a Lawyer?	16
Step 3: Filling Out a <u>Summons With Notice</u> (Form A-1)	17
Step 4: Filing the <u>Summons With Notice</u> (Form A-1)	23
Step 5: Serving the <u>Summons With Notice</u> (Form A-1)	26

Staying On Track

Step 6: What To Do After Service of the <u>Summons With Notice</u>	29
Step 7: Filling Out a <u>Verified Complaint</u> (Form A-3)	33
Step 8: <u>Answers</u> and <u>Settlement Agreements</u>	37

Step 9:	Filling Out and Serving a <u>Sworn Statement of Removal of Barriers to Remarriage</u> (Form A-6)	39
Step 10:	Filling Out the <u>Affidavit of Regularity</u> (Form A-8)	43
Step 11:	Filling Out the <u>Affidavit of Plaintiff</u> (Form A-9)	46
Step 12:	Filling Out the <u>Note of Issue</u> (Form A-10)	52
Step 13:	Filling Out the <u>Request for Judicial Intervention</u> (Form A-11)	54
Step 14:	Filling Out <u>Findings of Fact and Conclusions of Law</u> (Form A-12)	56
Step 15:	Filling Out the <u>Judgment of Divorce</u> (Form A-13)	60
Step 16:	Filling Out the <u>Part 130 Certification</u> (Form A-14)	68
Step 17:	Filling Out the <u>Court Notification</u>	69
Step 18:	Filling Out the <u>Certificate of Dissolution of Marriage</u>	71
Step 19:	Taking the Papers to Court	72
Step 20:	Filling Out the <u>Notice of Entry</u> (Form A-15)	75
Step 21:	Serving and Filing the <u>Notice of Entry</u>	77
	Practice Forms:	79

You can use this booklet if:

- you want to start a divorce from a spouse (the person to whom you are married) *and you believe that your spouse will not oppose the divorce in any way* (an uncontested divorce);
- you and your spouse do not have any children together under 21 years old and none are expected during the divorce;
- you will be doing the divorce without a lawyer.

Please keep in mind that while this booklet can help you do your divorce without a lawyer, there can be a lot more to think about than just ending the marriage between you and your spouse and filling out court papers. For example:

Do you need an order of protection to help keep you safe from your spouse after the divorce?

Do you need continued financial support (maintenance) from your spouse after the divorce? Do you need health insurance?

If you and your spouse owned things together and/or owe money together, how should the property and debts be divided in the divorce?

Does your spouse have a pension or other financial retirement plan? Can you share in it if you divorce?

A lawyer can help you think through these and other important issues and take the legal steps to get you what you want. *We strongly suggest that you give serious thought to using a lawyer for your divorce.*

If you are unsure how to find a lawyer, these resources can help you find one:

- Go to www.lawhelp.org/ny if you cannot afford a lawyer;
- Call the New York State Bar Association Lawyer Referral Service (toll free) at 1-800-342-3661;
- Go to www.nycourthelp.gov and click on “Lawyers”;
- Go to www.nycourts.gov/attorneys/nybarassociations.shtml;
- Ask at any courthouse about lawyer referral services.

In this booklet you will find the main court forms needed for getting a divorce; help with filling out the forms; and instructions for doing the other things you will need to do to get your divorce.

The booklet has two parts — this Instructions Section and a Practice Forms Set.

If you are using the booklet, you should already have a set of Official Forms for your divorce case that were given to you with the booklet or that you obtained earlier. *For each divorce form, please use the instructions to fill out a Practice Form first.* When you are satisfied that the Practice Form is correct, copy your answers to the Official Form.

If you do *not* yet have a set of Official Forms, you can get them free at your county's Supreme Court or by downloading them from www.nycourthelp.gov or www.nycourts.gov/forms/index.shtml.

If you have decided not to use a lawyer and to continue with this booklet, please *read and completely finish only one step at a time.* Reading ahead or going out of order can be confusing.

Ready to start? Please go to Step One.

1

Step 1: Opening Questions

Steps One through Five are about starting your divorce.

In these steps you will find out if New York State law allows your divorce at this time and, if so, how to fill out the papers that start the divorce and get them to your spouse.

In Step One you will answer several questions to see if you can start a New York State divorce case.

How old are you?

If you are at least 18, you can continue with this booklet.

If you are under 18, do *not* continue with this booklet. Talk with a lawyer about your situation.

Can you answer “Yes” to at least *one* of the following three questions?

1) Are you *or* your spouse now living in New York State, and have you lived in New York State for the last *two* years?

2) Are you *or* your spouse now living in New York State, have you lived in New York State for the last year, *and* is at least one of the following also true?

- your marriage ceremony was performed in New York State; or
- you lived in New York State with your spouse as husband and wife; or
- the “grounds” for your divorce happened in New York (“grounds” means a legal reason for divorce).

3) Do you *and* your spouse currently live in New York State (no matter how long) and your grounds for divorce happened in New York?

If you answered “Yes” to any *one* of those three questions, you may continue with this booklet.

If you could not answer “Yes” to any *one* of those three questions, you *cannot* start a New York State divorce at this time. Do *not* continue with this booklet. Talk with a lawyer about your situation.

Do you have grounds for divorce?

Next you will read about the six New York State divorce grounds. (Remember that “grounds” means a legal reason for divorce.)

After reading, if you believe you have at least *one* of these six grounds for divorce, continue with this booklet.

If you are not sure, do *not* continue with the booklet. Talk with a lawyer about your situation.

Ground #1: **Abandonment**

Please answer the following three questions:

- Did your spouse move out of the marital home at least one year ago and not move back – without any good reason and without your agreeing to it?
- Even if your spouse is still living in the marital home, has your spouse refused to have sexual relations with you for at least one year, without good reason and without you agreeing to it, even though you have continued to ask your spouse to have sexual relations with you?
- Has your spouse refused to let you into the marital home for at least one year, without good reason and without you agreeing to it, even though you have continued to ask your spouse to let you into the home?

If you answered “Yes” to any *one* of the three questions , you can ask for a New York State divorce on the Abandonment ground.

Ground #2: **Cruel and Inhuman Treatment**

Please answer the following question:

- Did your spouse's treatment of you endanger your physical or mental well-being and make it unsafe or improper for you to continue living with your spouse?

If you answered "Yes" to this question, you can ask for a New York State divorce on the Cruel and Inhuman Treatment ground. If you use this ground, be prepared to describe the specific dates, places, and details of the cruel and inhuman treatment that took place.

Ground #3: **Imprisonment**

Please answer the following two questions:

- Did your spouse go to prison *after* you were married?
(You cannot use this ground if your spouse was in prison when the two of you got married.)
- Was the imprisonment for at least three consecutive years?

If you answered “Yes” to *both* of these questions, you can ask for a New York State divorce on the Imprisonment ground.

Ground #4: **Adultery**

Please answer the following two questions:

- Did your spouse voluntarily have sexual intercourse or commit an act of oral or anal sexual contact with any other person besides you during your marriage?
- Is it less than five years since the time you found out about this?

If you answered “Yes” to *Both* of these questions, you can ask for a New York State divorce on the Adultery ground.

Important information about the Adultery ground:

Your own testimony about the adultery is not enough by itself to prove adultery in court. Even if your spouse admits the adultery in court, that also is not enough proof. New York law requires, at minimum, additional proof that “corroborates” (supports) your statement and/or your spouse’s admission.

If you can’t use the Adultery ground because it would be too hard for you to prove it in court, you can still use the facts about the adultery to help prove the Cruel and Inhuman Treatment ground.
(See Ground #2.)

Ground #5: Conversion of a Judgment of Separation

Please answer the following three questions:

- Do you have a Judgment of Separation for this marriage from a New York State Supreme Court or a court from another state?
- Have you and your spouse lived apart for at least one year since the court signed that judgment?
- Have you substantially complied with the terms and conditions of that judgment?

If you answered “Yes” to *all three* of the questions, you can ask for a New York State divorce on the Conversion of a Judgment of Separation ground.

Ground #6: Conversion of a Written Agreement of Separation

Please answer the following four questions:

- Did you and your spouse sign a *written* agreement saying that you will live separate and apart (and perhaps containing other conditions)?
- Was the written agreement signed by you and your spouse in the presence of a notary public?
- Have you lived separate and apart from your spouse for at least one year since the date of the agreement? (Use the *later* date to calculate this if you and your spouse signed on different dates.)
- Have you substantially complied with the terms and conditions of the agreement?

If you answered “Yes” to *all four* of these questions, you can ask for a New York State divorce on the Conversion of a Written Agreement of Separation ground.

(Note: No matter which ground for divorce you are choosing, if you and your spouse have a Written Agreement of Separation, it should be filed in the County Clerk’s Office in the county where either you or your spouse currently reside. Call or visit the County Clerk’s Office for more information.)

Summary of Step One: **Opening Questions**

In this step you learned about New York State divorce rules for **age, residency, and grounds**.

Read the material again, then ask yourself these questions:

- **Do I understand the material I have read so far?**
- **Am I sure that I qualify for a New York State divorce based on age, residency, and grounds?**
- **Am I comfortable continuing to use this booklet?**

If you answered “No” to *any* of these questions, do not continue with this booklet. Talk with a lawyer about your situation.

If you are ready to go ahead, please go to the next page.

2

Step 2: How much will it cost without a lawyer?

Usually, the total fees will be **approximately \$400**, as follows:

- Starting the case: It costs **\$210** to buy a case Index Number at your County Clerk's Office to start a New York State divorce case.
- Later in the case: Other fees totaling **approximately \$160** will have to be paid. These additional fees will be described as you follow the steps in this booklet.
- At the end of the case: If the court grants the divorce, several other fees will have to be paid for certain legal papers showing that the divorce was approved. These costs vary from county to county, but will roughly total **\$5-\$30**.

What if you cannot afford to pay these fees? You can ask the Supreme Court where you are filing the divorce to allow you to do your case without paying them (a "Waiver of Fees"). You will find more information about asking for a Waiver of Fees in Step Four of this booklet.

Are you in a federal, state, or local correctional institution? If so, and you want to ask for a fee waiver, there is a special procedure. Information on the procedure is available from the Supreme Court Clerk's Office of the county in which you are incarcerated. If your facility has a law library, see New York Civil Procedure Law and Rules (CPLR) Section 1101(f).

3

Step 3: Filling Out a Summons With Notice (Form A-1)

In this step you will learn how to fill out a **Summons With Notice** in order to start your divorce case.

Go to the Practice Forms in the back of this booklet and find the form called Summons With Notice — Form A-1. (You can either tear out the form before you use it, or fill it out in the booklet.)

You will see that the practice form has orange numbers to show you where to put information.

Find 1 at the top left of the form.

Under the words “Supreme Court of the State of New York,” write the name of the county where you are going to file these divorce papers. You can choose:

- the county where you live; or
- the county where your spouse lives; or
- any other New York State county as long as either you or your spouse lives in New York State and your spouse doesn’t object to this choice

The divorce case will be heard in the Supreme Court of the county that you choose.

Find 2 and 3 at the top left of the form.

- Write your name in the space where you see the word “Plaintiff.” You are the plaintiff. Write your spouse’s name in the space where you see the word “Defendant.” Your spouse is the defendant.

You are going to have to write your name and your spouse’s name *the exact same way* whenever the names have to be put on any form. Please be sure to write the names on the Summons With Notice form the way you want them to be known in the case.

Find 4 in the top right corner of the form.

- Do *not* write anything in this space yet. The index number will be put in later when you buy one from your County Clerk’s Office.

Find 5 at the top right of the form.

- Leave the line “Date Summons Filed” blank for now.

Find 6 at the top right of the form.

- Next to the words “Plaintiff designates” write the name of the county you have chosen for the case (the name of the county you wrote in 1).

Find 7 at the top right of the form.

- On the line under the words “The basis of venue is,” tell why you have chosen the county that you wrote above in 6. For example, if you chose your county, you can write “Plaintiff’s county.” Check the box that tells whether the county chosen is where you live (plaintiff) or where your spouse lives (defendant). On the lines under the boxes, write the address of the person whose box is checked.

Do not write your address, telephone number, and social security number on this form or on any other form if you want this information to be secret (confidential)!

If you are worried about domestic violence — or have other reasons for wanting your address, telephone number, and social security number to be kept off the divorce papers — you will need a Confidentiality Order. You will find more information about asking for a Confidentiality Order in Step Four of this booklet.

For now, leave this information blank if you want it to be confidential.

Find 8 in the middle of the form.

- After the words “YOU ARE HEREBY SUMMONED to serve a notice of appearance on the,” check the box labeled “Plaintiff.” (Do *not* check the box labeled “Plaintiff’s Attorney.”)

Find 9 in the middle of the form towards the left.

- After the word “Dated,” write in the date you are filling out the form.

Find 10 in the middle of the form towards the right.

- When you copy your answers to the official form, you will be signing your name here, but it is not necessary to sign this practice form.

Find 11 just below the signature line.

- Check the box marked “Plaintiff.”

Find 12 immediately below 11 .

- Print your name, address, and telephone number on the lines shown. *Remember to leave the spaces for your address and telephone number blank if you do not want your spouse to know this information.*

Find 13 near the bottom of the form.

- Read the “NOTICE.” At the end of the notice, after the words “**DRL 170 subd.”, write the number of the ground you have chosen for the divorce as shown in small type at the bottom of the page. After the number, on the longer line, write in the name of the ground. For example, this is what the line would like if you picked Abandonment as your divorce grounds: “**DRL 170 subd.(2) - Abandonment”. *You may want to re-read the material about divorce grounds on pages 9-14 of this booklet before filling out this section.*

Find 14 near the bottom of the form.

This is the space to use for asking for other things, if any, that you want the court to give you besides the divorce itself.

Examples of these kinds of things are:

- An Order of Protection (if you need protection from your spouse)

*Note that if you want an **immediate** Order of Protection you have to file additional court papers besides this Summons With Notice. Immediately talk with your local Family Court Clerk's Office, or local criminal court clerk's office, or your Supreme Court Clerk's Office, or **call the police in an emergency**.*

- Maintenance (alimony) payments from your spouse
- Health insurance paid for by your spouse
- Specific property from the marriage
- The right to live without your spouse in the marital home
- The right to resume the use of a former last name
- The right to continue any court orders that already exist

The court will decide whether to approve your requests once it has all the evidence it needs for making a decision. This list is not meant to include all possible requests. It is also possible, of course, that you may have no such requests.

You must ask for what you want, if anything, on this form. If you don't ask, you may be giving up your rights to the things you want.

If you need more space than the lines on the form, use the additional sheet of paper provided with the form. At the top of the additional sheet of paper, fill in the blanks for your name, your spouse's name, and the name of the county where you are filing the divorce. Leave the space for the Index Number blank for now. Staple the additional sheet to the form. If you are using the additional sheet, write "Please see attached sheet" on the blank lines in this section.

If there is nothing extra you want in the divorce (that is, you only want a divorce and there is nothing else you are asking for), write the word "None" on the lines in 14.

Look over the practice form you have just filled in. If you think it is correct, go to the Official Forms Set, find the form called Summons With Notice – Form A-1, and copy your answers to it. Use black ink only on all official forms. Do *not* use "white out" if you make a mistake. Neatly draw a line through your answer and rewrite it. Don't forget to sign this form where you are asked for your signature (see the practice form at 10). *Sign the exact name you wrote at the top of the form.*

When you are finished, make two copies. The original will go to the court. Keep one copy for yourself; the other copy is for your spouse.

4

Step 4: Filing the Summons With Notice (Form A-1)

The filing of a Summons With Notice in the Office of the County Clerk is the step that makes your divorce an official court case.

Important: Before you go to the County Clerk's Office, ask yourself these questions:

- Do I need a Waiver of Fees? (Re-read page 16.)
- Do I need a Confidentiality Order? (Re-read page 19.)
- Are my spouse's whereabouts unknown? (In other words, you don't know your spouse's living address or any other place where your spouse can be found.)

If you answered "No" to *all three* questions, go to the County Clerk's Office to buy the Index Number. Do the following:

- Take the original and the two copies of the Summons With Notice to the County Clerk's Office in the county where you have chosen to start the divorce. For a list of County Clerk addresses and telephone numbers, go to www.dos.state.ny.us/lists/coclerks.html
- Buy a case Index Number at that office for **\$210**. (If you cannot afford this fee, re-read page 16 and see below how to apply for a Waiver of Fees to get the Index Number without paying.)
- When you get the Index Number, check to be sure that the County Clerk's Office stamps the date you filed the Summons With Notice on all copies of the form.

- The clerk will file the original in the County Clerk's Office and give you back the stamped copies. Go to the next step (Step Five) to learn how to have one of these copies given to your spouse.

If you answered "Yes" to *any* of the three questions on the previous page (that is, you need a Waiver of Fees or Confidentiality Order, or you do not know where your spouse can be found), do *not* go to the County Clerk's Office yet. Instead, go to the Supreme Court Clerk's Office where you are starting your divorce case *before* filing the Summons With Notice with the County Clerk. Read the information below:

Asking for a Waiver of Fees

If you cannot pay the fee for the Index Number and the other divorce case fees: take the Summons With Notice to the Supreme Court Clerk's Office in the county where you are starting the divorce.

Tell the person who helps you at the Supreme Court that you want an Order to Waive Fees. There will be forms to fill out. You will need proof of income and, possibly, other documents.

Asking for a Confidentiality Order

If you want your name, address, and social security number to be left off the divorce case forms, take the Summons With Notice to the Supreme Court Clerk's Office in the county where you are starting the divorce.

Tell the person who helps you at the Supreme Court that you want the court to give you a Confidentiality Order. There will be forms to fill out.

If you don't know where your spouse lives, works, or spends time

There are special procedures to follow. The reason for this is that your spouse must be given the Summons With Notice in person ("personally served") unless the court allows the papers to be served another way ("alternate service").

Take the Summons With Notice to the Supreme Court Clerk's Office where you are starting the divorce and explain that you do not know where your spouse lives, works, spends time, or otherwise can be found.

You may be told that you have to put the Summons With Notice for your divorce in a newspaper in order to give your spouse legal notice ("service by publication"). *If you can't afford the fee for that, tell that to the Supreme Court Clerk's Office and ask about having the Summons With Notice put in a newspaper at no charge to you.*

Step 5: Serving the Summons With Notice (Form A-1)

After you have filed the Summons With Notice with the County Clerk, you must “serve” a copy of it on your spouse.

“Serving” the Summons With Notice is how you tell your spouse that you have started a divorce case in court.

“Serving” means having the Summons With Notice given to your spouse in person (“personal service”) unless the court has made an order allowing you to serve the papers another way (“alternate service”).

There are important rules about serving the papers:

- You personally are *not allowed* to give the Summons With Notice papers to your spouse.
- The person you get to give the papers to your spouse must be over 18 years old and must not be personally involved in your case.
- The person who gives the papers to your spouse is *not allowed* to do this on a *Sunday, Sabbath day, or other day of religious observance*.

Look for the date of filing that the County Clerk’s Office stamped on the Summons With Notice. Your spouse must receive the Summons With Notice **within 120 days of that filing date**.

Where can the papers be given to your spouse?

There are three rules:

- *Anywhere inside New York State if the person who is giving the papers to your spouse lives in New York State*
- *Anywhere outside New York State if the person who is giving the papers to your spouse lives in New York State*
- *Anywhere outside New York State even if the person who is giving the papers to your spouse does **not** live in New York State as long as:*

that person is either a licensed lawyer in the state where the Summons With Notice is going to be given to your spouse

OR

that person is licensed or authorized to serve court papers by the state where the Summons With Notice is going to be given to your spouse. Get a copy of the person's license or other authorization to serve court papers. You are going to have to give the court where you filed your divorce case a copy of the person's license or other authorization to serve papers.

Three other important things about serving the Summons With Notice:

- Make sure that the person who is going to give the Summons With Notice to your spouse also has these two forms:

Affidavit of Service — Form A-4 in the Official Forms Set
Affidavit of Defendant — Form A-5 in the Official Forms Set

(Note that these two forms are not included in this booklet. You will find them in your Official Forms Set.)

- Make sure that the person who gives the Summons With Notice to your spouse fills out and gives *you* the completed Affidavit of Service. Instructions for the person who serves the papers and fills out the Affidavit of Service are attached to the form.
- Make sure that the person who gives the Summons With Notice to your spouse *also gives your spouse, at the same time, the Affidavit of Defendant* and instructions. Your spouse, not you, fills out this form.

6

Step 6: What To Do After Service of the Summons With Notice (Form A-1)

With the completion of Step Five, you have finished the first stage of the uncontested divorce case process.

You have started the divorce in court by filing the Summons With Notice and had the Summons With Notice served on your spouse. The person who served the papers has given you the filled-out, *signed and notarized* Affidavit of Service showing that your spouse received both the Summons With Notice and the Affidavit of Defendant.

Now what?

The answer to this question depends on what your spouse does after receiving the Summons With Notice.

Over the next several weeks you are going to find out whether your divorce will be uncontested. If not — if your spouse opposes the divorce altogether or in part — the court will consider your divorce to be contested.

In this step (Step Six) and the next two steps (Steps Seven and Eight) this booklet will guide you through the different things that your spouse can do and that you will have to do in response to keep the divorce case going.

Let's look at the possibilities, now that your spouse has the divorce papers:

- *Your spouse does nothing.*

If **40 days** go by from the date your spouse received the Summons With Notice and you do *not* receive either a copy of a form called a Notice of Appearance or a filled-out form called an Affidavit of Defendant from your spouse, you can immediately go forward with finishing the divorce. Skip Steps Seven and Eight and go to Step Nine in order to begin to fill out the next group of forms.

- *Your spouse sends you a filled-out Affidavit of Defendant.*

The Affidavit of Defendant is the form that your spouse can use to tell the court, among other things, that he or she is not opposing the divorce in any way (the divorce is “uncontested”).

If you receive a filled-out Affidavit of Defendant, read it carefully. If there is *anything* in it that you do not understand or have concerns about, either talk with a lawyer about your situation or talk to the Supreme Court Clerk's Office where you started the divorce to get lawyer referral information or other information that might help you. Please remember that court staff are not allowed to give legal advice.

As soon as you receive the Affidavit of Defendant form, you are allowed to file the next group of forms with the court. Skip Steps Seven and Eight, and go to Step Nine of this booklet.

- *Your spouse (or your spouse's lawyer on your spouse's behalf) files a Notice of Appearance.*

Read the Notice of Appearance carefully. There are deadlines for doing the next step in your case. If you decide to continue your divorce without a lawyer after receiving a Notice of Appearance, go to Step Seven of this booklet.

The chart on the next page summarizes the information in this step.

During the 40 days after you serve the <u>Summons With Notice</u> , your spouse...	Your divorce...	Next step?
Sends nothing	Is uncontested	Go to Step Nine
Sends an <u>Affidavit of Defendant</u> (with or without other papers)	Is uncontested	Go to Step Nine
Sends a <u>Notice of Appearance</u> only (no lawyer)	Is still uncontested	Go to Step Seven
Sends a <u>Notice of Appearance</u> from a lawyer	Give serious consideration to using a lawyer for your divorce case. If you decide to continue without a lawyer, go to Step Seven.	

Step 7: Filling Out a Verified Complaint (Form A-3)

Read carefully the Notice of Appearance you have received from your spouse. Note that it asks for a form called a Complaint. You have **20 days** to serve your spouse with a Complaint from the date you were served with your spouse's Notice of Appearance.

Even though your spouse filed a Notice of Appearance, it does *not* necessarily mean that he or she is opposing the divorce. Your divorce case can still turn out to be uncontested. It will depend on what happens after you get your filled-out Complaint form to your spouse.

(In some counties, the Supreme Court may require you to fill out a Verified Complaint even if your spouse does not ask for one. Check with your Supreme Court Clerk's Office to see if this is true in your county.)

Go to the Practice Forms in the back of this booklet and find the form called "Verified Complaint (Action for Divorce)" — Form A-3.

Fill in ① ② ③ and ④ the same way you did on the Summons With Notice.

Find ⑤ in the middle of page 1 of the form.

Check the box to the left of the word "Plaintiff."

Find ⑥ in the middle of page 1 of the form.

Write your address on the line for "Plaintiff resides at," but do *not* do this if you have a Confidentiality Order from the court. If you have this order, write the address of the "agent for service" shown in the order.

Find 7, 8, 9, 10, 11, and 12 on the bottom half of page 1 of the form.

Read paragraphs "A)," "B)," and "C)." *You only have to check a box (or boxes) in one of those three paragraphs.* Decide which of the three paragraphs matches your situation. Then check the correct box or boxes in that paragraph.

If the facts of your situation do *not* fit at least one of the three paragraphs "A)," "B)," or "C)," *stop.* Do *not* go further with this booklet. Talk with a lawyer about your situation.

Find 13 at the top of page 2 of the form.

Write the date and place of your marriage and check the box which tells whether you were married in a religious ceremony. If you check "was," read the instructions immediately below. If you check "was not," go directly to 18 at the top of the next page.

Find 14, 15, 16, and 17 towards the top of page 2 of the form.

Read the four statements. Check either Box 14 or Box 15, depending on which is correct for your situation. Do not check Box 16. (You will receive more information about this action later in the booklet.) Check Box 17 if you do *not* want your spouse to have to take actions required by his or her religion to permit you to re-marry.

Find 18 in the middle of page 2 of the form.

Check the box with the name of the ground you have chosen for divorce. (Recall that you put that ground on the Summons With Notice — Form A-1 that you served on your spouse.)

Find 19 20 21 22 23 and 24, beginning on page 3 of the form to the middle of page 5 of the form.

Find the number that matches the ground you checked in 18. After you have found it, fill in the facts about what happened in the marriage for the ground you have chosen. (If necessary, read the material about divorce grounds on pages 9-14 of this booklet again.)

Find 25 at the bottom of page 5 of the form.

After the word “NINTH”: check the appropriate box and give the maiden name where shown.

Find 26 at the top of page 6 of the form.

Go to your copy of the Summons With Notice that was given to your spouse. In the middle of the section at the bottom of the page you wrote all of the things that you are asking for in your case in addition to the divorce itself. (You may have used extra sheets of paper.) *Write the same answer on the lines in 26 of this Verified Complaint form.*

Use extra paper if necessary.

Find 27 near the top of page 6 of the form.

Leave the date blank on the practice form. (You only have to date the Official Form; see below.)

Find 28 near the top of page 6 of the form.

Do not sign the practice form. Write your name, address, and phone number, but remember that if you have a Confidentiality Order the address and phone number you give will be those of the “agent for service” in the order, not your own.

Find 29 in the middle of page 6 of the form.

Leave this blank on the practice form. The section will be filled out by a Notary Public.

Look over your answers on the practice form. If you are satisfied they are correct, go to the Official Forms Set, find the form called “Verified Complaint (Action for Divorce)” — Form A-3, and copy your answers to it. Don’t forget to date the form in the section at the top of page 5.

Take the form to a Notary Public and have it notarized. Then make two copies. The original will be for the court. A copy will go to your spouse; the other copy is yours.

Mail a copy to your spouse (or to your spouse’s lawyer, if the Notice of Appearance form came from a lawyer) by certified mail, with a return receipt.

Step 8: Answers and Settlement Agreements

You've sent the Verified Complaint. **What's next?**

- In response to your Verified Complaint, you may receive a form called an Answer from your spouse. *If you receive an Answer, your divorce is in all likelihood no longer uncontested and you should not continue to use this booklet.* You should immediately give serious consideration to using a lawyer for your divorce case.
- If you do not receive an Answer from your spouse within **30** days, but instead receive nothing at all or the form called an Affidavit of Defendant, your divorce is uncontested and you may now begin to fill out the next set of forms. Go to Step Nine for instructions.
- It is also possible that the next thing you receive, instead of an Answer or any other type of legal paper, will be a call or letter from your spouse — or your spouse's lawyer — to discuss "settling" (coming to an agreement) on all of the things you are asking for in your divorce.

While it is always better to have a lawyer to handle settlement discussions for you (especially if your spouse has a lawyer), you are allowed to do it yourself. If these discussions end up in an agreement, the things that you and your spouse agree to must be put into a written Settlement Agreement (sometimes called a Stipulation of Settlement) that gets filed with the court.

Before you file a Settlement Agreement with the Supreme Court that is handling your divorce, you will have to pay a fee to the County Clerk. This fee is *in addition* to the divorce case fees; check with your local Supreme Court Clerk's Office or County Clerk's Office about the amount of the fee and the procedures for paying it.

Below is a chart summarizing the information in this step (Step Eight).

Your spouse (or spouse's lawyer) gets your <u>Verified Complaint</u> and...	Your divorce...	Next step?
Sends you nothing within 30 days	Is uncontested	Go to Step Nine
Contacts you to work out a <u>Settlement Agreement</u> (<i>No Answer has been sent</i>)	Is uncontested	If you want to reach agreement and do not feel you need a lawyer, start settlement discussions.
Sends you an <u>Affidavit of Defendant</u>	Is uncontested	Go to Step Nine
Sends you an <u>Answer</u>	Is <i>contested</i>	Give serious consideration to using a lawyer for your divorce case. Do <i>not</i> use this booklet.

9

Step 9: Filling Out and Serving a Sworn Statement of Removal of Barriers to Remarriage (Form A-6)

Starting with this step and continuing through Step Eighteen, this booklet will give you instructions for filling out the rest of the forms needed for your uncontested divorce.

Step Nine (this Step) is the filling out and serving of a Sworn Statement of Removal of Barriers to Remarriage — Form A-6. By filling out and signing this form, you are telling the court that you have done everything that your religion requires you to do to remove barriers to your spouse's remarriage.

There are two reasons you might *not* have to do this step (Step Nine):

- *If you were not married in a religious ceremony, you do not have to read the rest of this step. Go to the next step — Step Ten.*
- Look at the Affidavit of Defendant if you received one from your spouse. Go to **page 2** of the Affidavit of Defendant. Look for the word “SEVENTH” just below the middle of the form. Did your spouse check the box labeled “B” that says “I waive the Plaintiff’s requirement to file the affidavit pursuant to DRL 253 Removal of Barriers to Remarriage”? If your spouse checked box “B” do *not* read the rest of this step. Go to the next step — Step Ten.

Otherwise, you must fill out a Sworn Statement of Removal of Barriers to Remarriage — Form A-6. **Go to the Practice Forms and find that form.**

Find 1 at the top left of the form.

Under the words “Supreme Court of the State of New York,” write the name of the county where you filed the divorce.

Find 2 at the top left of the form.

Write your name in the space where you see the word “Plaintiff.”

Find 3 at the top left of the form.

Write your spouse’s name in the space where you see the word “Defendant.”

Find 4 in the top right-hand corner of the form.

Look for the words “Index No.” Put in the index number that you got from the County Clerk’s Office.

Find 5 and 6 in the middle of the form.

Leave these blank for now. You are going to have to sign this form in front of a Notary Public. When you sign the form, write the name of the state and county where the Notary Public is located.

Find 7 in the middle of the form.

After the word “I” write your name exactly as you wrote it in Section 1 as “Plaintiff.”

Find 8 in the middle of the form.

Check the box next to the word “Defendant’s.”

Be sure that before you go to a Notary Public and swear to the truth of the statement contained in 8 that you have successfully completed whatever steps your religion requires you to take for your spouse to be able to re-marry.

Find 9 at the bottom of the form.

Leave this section blank for now.

Look over the practice form you have just filled in. If you think it is all correct, go to the **Official Forms Set**, find the form called “**Sworn Statement Of Removal Of Barriers To Remarriage**” — **Form A-6**, and copy your answers on to it.

Getting the form notarized

Take the form to a Notary Public, where you will check the box that says “Plaintiff’s” and sign your name in the presence of the Notary.

When you are finished, make two copies. One is for yourself; one is for your spouse; the original will be given to the court.

Serving the Sworn Statement of Removal of Barriers to Remarriage

Mail a copy of the completed Sworn Statement of Removal of Barriers to Remarriage to your spouse. Use certified mail and request a return receipt. Keep the receipt with your other divorce case papers.

Go to the Practice Forms and find the form called Affidavit of Regularity — Form A-8.

Fill in ① ② ③ and ④ exactly the same as you did for the other forms you have already done.

At ⑤ and ⑥, write nothing now. Later, write the name of the state and county where you are located when you sign the form in the presence of a Notary Public.

Find ⑦ in the middle of the form.

Write your name on the line before the words “being duly sworn deposes and says:”

Find ⑧ in the middle of the form.

Check the box next to the words “the Plaintiff herein.”

Find ⑨ in the middle of the form.

Check the box next to the words “Summons with Notice.”

Find ⑩ in the middle of the form.

Check the box next to the word “personally” if the Summons With Notice was given to your spouse.

Check the box next to “pursuant to court order dated____” if the court gave you an order to serve the Summons With Notice by publication or

other alternate means, and write the date of the order on the line provided.

Find 11 in the middle of the form.

Check the box next to *either* (not both) of the words “within” or “outside,” depending on where the Summons With Notice was given to your spouse.

Find 12 in the middle of the form.

If you did not receive a Notice of Appearance or an Affidavit of Defendant from your spouse: check the box next to “not appeared and is in default.”

If you received an Affidavit of Defendant from your spouse: check the box next to “appeared and waived his/her right to answer.”

Do *not* check the third box. (It is for contested divorces that later become uncontested.)

Find 13 on page 2 of the form.

Do *not* sign the form.

Check the box next to the word “Plaintiff.”

Print your name on the next line.

As mentioned, you will have to sign this form in the presence of a Notary Public, but you will do that later, together with a group of other forms after you have filled them all out.

Look over the practice form you have just filled out. If you think it is correct, go to the Official Forms Set, find the form called “Affidavit of Regularity” — Form A-6, and copy your answers to it.

Later, when you are finished with the Notary Public, make a copy for yourself. The original is for the court.

11

Step 11: Filling Out the Affidavit of Plaintiff (Form A-9)

Go to the Practice Forms and find the form called "Affidavit of Plaintiff — Form A-9.

Fill in ① ② ③ ④ ⑤ and ⑥ the same way as you have on previous forms.

Find ⑦ in the middle of page 1 of the form.

Write your name before the words "being duly sworn..."

Find ⑧ in the middle of page 1 of the form.

In "A)," write your address and social security number for "Plaintiff" and your spouse's address and social security number for "Defendant."

*Do **not** write in your address if you have been given a Confidentiality Order. Instead, write the name and address of the "agent for service" as found in your order.*

*Do **not** write in your social security number if it was included in the Confidentiality Order.*

Find ⑨ in the middle of page 1 of the form.

In "B)," check the box next to the word "Plaintiff's" if you have a Confidentiality Order and explain that in the lines immediately below.

Find ⑩ in the middle of page 1 of the form.

If you do not know your spouse's social security number, check the box next to the word "Defendant's" and write "I do not know the Defendant's social security number" in the lines immediately below.

Find 11 12 13 and 14 towards the bottom of page 1 of the form.

Read "A", "B", and "C." *You only have to check a box (or boxes) in only one of those three paragraphs.* Decide which of the three paragraphs [A), B), or C)] matches your situation. Then check the correct box or boxes in that paragraph.

If the facts of your situation do *not* fit at least one of the three paragraphs A), B), or C), do *not* continue with this booklet. Talk with a lawyer about your situation.

Find 15 at the top of page 2 of the form.

Write in the date and place of your marriage.

Find 16 at the top of page 2 of the form.

Check the box that tells whether you were married in a religious ceremony. If you check "was," complete 17, 18 and 19. If you check "was not," go directly to 20.

Find 17 near the top of page 2 of the form.

Look at the Verified Complaint Practice Form — Form A-3. If you checked Box 14 on that form, check this box. Otherwise, leave it blank.

Find 18 near the top of page 2 of the form.

Check this box if you checked Box 16 on page 2 of the Verified Complaint Practice Form — Form A-3.

Find 19 near the middle of page of the form.

Check this box if you checked Box 17 on page 2 of the Verified Complaint Practice Form — Form A-3.

Find 20 in the middle of page 2 of the form.

Check the box with the name of the ground you have chosen for divorce.

Find 21 22 23 24 25 and 26 , beginning at the top of page 3 of the form to the bottom of page 4 of the form.

Find the number(s) that matches the ground you checked in 20. After you have found it, fill in the facts about what happened in the marriage for the ground you have chosen. (If necessary, re-read the material about divorce grounds on pages 9-14 of this booklet.)

Find 27 near at the top of page 5 of the form.

Read the paragraph labeled “**SIXTH.**” If this is *not true* for your situation, do *not* go any further in this booklet. Talk with a lawyer.

Find 28 near the top of page 5 of the form.

After the word “SEVENTH,” read all of the material next to the different boxes, then check the boxes that best fit what you know about your spouse’s current military status.

Find 29 in the middle of page 5 of the form.

Check the correct box about yourself.

If you are self-supporting and want maintenance payments (“alimony”) from your spouse, cross out the word “not” in the line after the box with the phrase “am not seeking maintenance.”

Find 30 in the middle of page 5 of the form.

Check the correct box about your spouse (“Defendant”).

Find 31 near the bottom of page 5 of the form.

After the word “NINTH:” Check the appropriate box and give the maiden name where shown.

Find 32 at the bottom of page 5 of the form.

After the word “TENTH:” Write nothing. (This is your agreement for the case to be put on the court calendar for action.)

Find **33** on page 6 of the form.

IMPORTANT: On the lines at the top of this section after the words “...dissolving the marriage between the parties and...” you *must* write in *any other thing* you want the court to give you in the divorce (besides, of course, the divorce itself). If you don’t ask for it here, the court may not give it to you. *Copy it exactly as you wrote it on the Summons With Notice — Form A-1 in the bottom section. (See instructions on page 21 of this booklet.)*

If you need more space than the lines on the form, use the additional sheet of paper provided with the form. At the top of the additional sheet of paper, fill in the blanks for your name, your spouse’s name, the name of the county where you have filed the divorce, and the Index Number. Staple the additional sheet to the form. If you are using an additional sheet, write “Please see attached sheet” on the blank lines in this section.

Find 34 on page 6 of the form.

- Do *not* sign the form.
- Check the box next to the word “Plaintiff.”
- Print your name on the next line

This form will have to be signed in the presence of a Notary Public, but you will do that with a group of other forms after you have filled them all out.

Look over the practice form you have just filled in. If you think it is correct, go to the Official Forms Set, find the form called “Affidavit of Plaintiff — Form A-9, and copy your answers to it.

Later, when you are finished with the Notary, make a copy for yourself. The original is for the court.

12

Step 12: Filling Out the Note of Issue (Form A-10)

Go to the Practice Forms and find the form called “Note of Issue”—Form A-10.

Fill out ① ② ③ and ④ the same way as you have on previous forms.

Find ⑤ in the middle of the form.

Check the box next to the word “Plaintiff.”

Find ⑥ in the middle of the form.

On the line next to the words “DATE SUMMONS FILED,” write the date stamped by the County Clerk’s Office on the Summons With Notice.

Find ⑦ in the middle of the form.

On the line next to the words “DATE SUMMONS SERVED,” write the date the Summons With Notice was given to your spouse.

Find ⑧ in the middle of the form.

Next to the words “DEFENDANT’S APPEARANCE,” check *one* of the following boxes:

- check the box “Appearance and Waiver” if you received an Affidavit of Defendant from your spouse
- check the box “Default” if you did *not* receive an Affidavit of Defendant from your spouse

- do *not* check the middle box (it is for contested divorces that later become uncontested)

Find 9 at the bottom of the form.

Check the box next to the word “Plaintiff.”

Write your address, telephone number, and fax number. *Do not do this if the court has given you a Confidentiality Order.* If you have this order, write the address, telephone number, and fax number of the “agent for service” shown on the order.

Find 10 at the bottom of the form.

Check the box next to the word “Defendant” and write your spouse’s address, telephone number, and fax number if you know them.

Look over the practice form you have just filled in. If you think it is correct, go to the Official Forms Set, find the form called “Note of Issue” — Form A-10, and copy your answers to it.

When you finished, make three copies. One is for you; the other two copies and the original are for the court.

13

Step 13: Filling Out the Request For Judicial Intervention (Form A-11)

The form is only required in courts outside New York City. If your divorce is in a court in New York City, do not fill out this form. Go to the next step — Step 14.

Otherwise, go to the Practice Forms and find the form called “Request for Judicial Intervention” — Form A-11.

Fill out ① ② ③ and ④ the way you have on previous forms.

Do *not* write anything in the box labeled “For Clerk Use Only.”

Find ⑤ in the top right-hand corner of the form.

Write the date you received your case index number from the County Clerk’s Office.

Find ⑥ in the middle of the form.

Check the box next to the word “Plaintiff.”

Write your name, address, and telephone number where shown. **BUT:** *Do not do this if the court has given you a Confidentiality Order.* If you have this order, write the name, address, and telephone number of the “agent for service” shown on the order.

Find ⑦ in the middle of the form.

Check the box next to the word “Defendant,” and write your spouse’s name as well as your spouse’s address and telephone number if you know them.

Find 8 at the bottom of the form.

If you know of any court case from any type of court involving both you *and* your spouse (for example, a divorce or separation from your spouse that you or your spouse started but did not finish; a lawsuit for money damages involving both of you; a request for an Order of Protection; or a housing eviction against both of you) write the name and other information about the case(s), to the extent that you know that information.

Find 9 and 10 at the bottom of the form.

Leave these blank on the practice form.

Find 11 at the bottom of the form.

Print your name the exact way you have been showing it on all forms.

Find 12 at the bottom of the form.

Check the box next to the word “Plaintiff.”

Look over the practice form you have just filled in. If you think it is correct, go to the [Official Forms Set](#), find the form called “[Request for Judicial Intervention-Uncontested Divorce](#)” — [Form A-11](#), and copy your answers to it. Don’t forget to date and sign the official form.

When you are finished, make **three copies**. One is for you; the other two copies and the original are for the court.

14

Step 14: Filling Out Findings of Fact and Conclusions of Law (Form A-12)

Find the form called Affidavit of Plaintiff — Form A-9 that you filled out in Step Eleven of this booklet. Keep it in front of you as you fill out the Findings of Fact and Conclusions of Law form because you will be able to use some of the same information.

Find the form called “Findings of Fact and Conclusions of Law” — Form A-12 in the Practice Forms.

Fill in ① ② ③ and ④ the same way as you have on previous forms.

Leave ⑤ blank.

Find ⑥ in the middle of page 1 of the form.

Go to page 1 of the Affidavit of Plaintiff — Form A-9. Find the box or boxes you checked from Boxes ⑪ - ⑭. Check the same box(es) on this practice form.

Find ⑦ at the top of page 2 of the form.

After the word “**THIRD**,” write the date and place of your marriage.

Check the box telling whether you were married in a civil or a religious ceremony.

Find 8 near the top of page 2 of the form.

After the word “**FOURTH**,” check the box that describes your situation.

Find 9 in the middle of page 2 of the form.

Check the box next to the words “submitted a Plaintiff’s Affidavit.”

Find 10 in the middle of page 2 of the form.

Go to page 2 of the Affidavit of Plaintiff — Form A-9 that you filled out in Step Ten.

Find 20, where you checked a box showing your grounds for divorce.

Now check the same box in **10** of this Findings of Fact and Conclusions of Law practice form.

Find 11 12 13 14 15 and 16 on pages 2 through 4 of the form.

Find the item(s) that you filled in on pages 2-4 of the Affidavit of Plaintiff — Form A-9 (items **21 - 26**) showing the ground(s) for divorce.

Now fill in the same ground(s) for divorce on this Findings of Fact and Conclusions of Law practice form.

Find 17 in the middle of page 4 of the form.

Under the word “SEVENTH,” check Box A) if you served a Sworn Statement of Removal of Barriers to Remarriage — Form A-6 on your spouse. Check Box B) if you were married in a civil (not religious) ceremony. Check where indicated in Box C) if waivers were given. (Re-read page 34 and page 39 of this booklet before checking Box C.)

Find 18 at the top of page 5 of the form.

If you have asked for maintenance payments (“alimony”) from your spouse in your divorce papers and you and your spouse have come to a written agreement on the amount and timing of the payments, or if you are the one who will be paying the maintenance and you have agreed to the payment terms, complete the boxes in paragraph “A).”

If there is no Settlement Agreement, and you want maintenance, fill in Paragraph “B)”. Check the box labeled “Defendant” and, to the right, check the box labeled “Plaintiff”. (You are the Plaintiff.) On the remaining lines, fill in the amount of maintenance you want, the proposed timing, and when you want the payments to start and finish.

If there is already a court order about maintenance regarding you and your spouse, and you either want that court order to continue after the divorce or you and your spouse have agreed that it will continue, fill in the information requested in paragraph “C).”

If you do not want maintenance payments from your spouse and your spouse is not asking for maintenance payments from you, check the box next to “Neither party seeks maintenance” in Paragraph “D).”

Find 19 towards the bottom of page 5 of the form.

If you and your spouse have reached a written agreement about how the marital property will be divided, check the box in paragraph “A)” and fill in the date of the written agreement. *Attach the original of the agreement to the Official Form. Keep a copy for yourself.*

Check box “B)” if the court has decided how the marital property is to be divided. Attach a copy or a transcript of the court’s decision.

If both you and your spouse are *not* asking the court to divide marital property in the divorce, check the box in paragraph “C).”

Find 20 at the top of page 6 of the form.

After the word “TENTH,” check the box for “Plaintiff’s” if you are the wife and want the court to allow you to use your former surname (maiden name). If you are the husband and want your wife to be able to do this after the divorce, check the box for “Defendant’s.”

Find 21 at the top of page 6 of the form.

After the word “ELEVENTH,” check the box for “Plaintiff.” Do *not* sign and date the form. The court will do this.

Look over the practice form you have just filled in. If you think it is all correct, go to the Official Forms Set, find the form called “Findings of Fact and Conclusions of Law” — Form A-12 and copy your answers to it. Attach a copy of any Settlement Agreement regarding marital property. Make a copy for yourself. The original is for the court.

Find the form called Judgment of Divorce — Form A-13 in the Practice Forms.

Leave the section at the top right of the form that starts “At the Matrimonial/IAS Part...” blank.

Fill in ① ② ③ and ④ the same way as on the other forms.

Leave ⑤ blank.

Find ⑥ towards the middle of page 1 of the form.

Check the box next to the word “personally” if you had someone give the papers to your spouse.

Check the box next to the words “pursuant to court order dated __” if you got an order from the court allowing you to notify your spouse about the divorce in another way because you did not know the whereabouts of your spouse. Write the date of the court order in the line provided.

Check the box that tells whether your spouse got the papers inside New York State or outside New York State.

Find ⑦ towards the middle of page 1 of the form.

Check the box next to the words “the Summons with Notice.”

Find ⑧ in the middle of page 1 of the form.

If you never received *any* papers from your spouse in the divorce,

check the box next to the words “not appeared and is in default.”

If you received an Affidavit of Defendant from your spouse, check the box next to the words “appeared and waived his or her right to answer or respond.”

Do *not* check the third box.

Find 9 in the middle of page 1 of the form.

Check the box next to the words “written proof.”

Also check the box next to the words “oral proof at inquest...” *if* you had a hearing before a judge or referee in order to get the divorce approved. Write in the date the hearing was held.

Find 10 towards the bottom of page 1 of the form.

Check the box next to the words “not presented for determination” if you asked for *nothing else* in the divorce besides the divorce itself.

Check the box next to the words “determined by the Court” if you asked for *any other thing* in the divorce in addition to the divorce itself (for example, an order of protection or maintenance) and the court made a decision about whether to award it to you or not.

Check the box next to the words “written settlement/separation agreement” if you and your spouse have a signed written agreement cover-

