

How to Get an Uncontested Divorce in Virginia

Many couples think an “uncontested” divorce means they have agreed to end the marriage. While it can be easier when you and your spouse agree that divorce is the best option, this agreement does not automatically mean that your divorce is uncontested. There are two general criteria to meet before you can file for an uncontested divorce, and the entire process involves quite a few steps.

1. You need to meet the criteria for divorce based on separation.

In Virginia, if you have no children (or you have children but they are over the age of eighteen) **and** you have a written separation agreement, you may file for divorce after you have been separated from your spouse for six months. However, if you have minor children, or if you don’t have a written separation agreement (sometimes called a property settlement agreement), you must wait until you have been separated for twelve full months before you can file for divorce. If you want to file for divorce based on fault grounds, your divorce is not uncontested.

2. You need to resolve all issues related to your marriage so that the court does not have any issues to decide.

Before a divorce is granted, a final decision (either by agreement or by court order) must be made about child custody, visitation, child support, spousal support, and the assets and liabilities accrued during the marriage. If these issues are not resolved and you require the court to enter an order about any of these matters, you will not qualify to file for an uncontested divorce.

3. Prepare a written property settlement agreement (and have it reviewed or prepared by an attorney prior to signing).

There are many issues involved in ending a marriage. Your agreement about issues such as car insurance, health insurance, retirement plans, business ventures, student loan debt, whether and when to sell a marital residence and numerous other issues should be carefully set out in your agreement. These agreements are binding contracts that you will later seek to have entered as a final order of the court, so it is extremely important to have your agreement prepared or reviewed by an attorney **before** you sign.

4. Meet with a lawyer to determine whether your circumstances qualify you to file an uncontested divorce even if you don’t have a written property settlement agreement.

It is rare for a couple without a written separation or property settlement agreement to qualify to file for a totally uncontested divorce. However, a meeting with an experienced family law attorney can help you decide whether your case might be the exception to the rule. For instance, if you and your spouse did not acquire any property during the marriage, or if there are no children, assets, or debts in common, you may have an uncontested divorce.

5. File your Complaint and have it properly served.

Complaints for Divorce are formal court pleadings and need to be served in the proper manner before you will be allowed to proceed with your case. If you know where your spouse is and the two of you are cooperating in obtaining a divorce, you can ask your spouse to sign an acceptance of service/waiver of notice form. Getting this form signed can help speed up the process and can save you costs of having your spouse served with future court paperwork related to the divorce.

6. Prepare a Final Decree of Divorce for review by the court.

If you and your spouse have both signed this Final Decree, it helps eliminate questions from the court about whether or not your spouse had notice of the proceedings. However, if you complied with all the notice provisions required by Virginia law, the court can still enter the Final Decree even if your spouse doesn't sign it.

7. Present your evidence to the court.

Once the court has pre-approved your Final Decree of Divorce, you need to present evidence to the court to establish that it is proper for the court to grant you a divorce. You and a witness (other than your spouse) need to appear in court and testify about facts such as Virginia residency, the date of marriage, the names of any children, the length of the separation, and other matters.

8. Get a certified copy of your Final Decree of Divorce and keep it in a safe place.

You may need it later to change your name, file for social security, change beneficiary designations, or for other purposes.

9. Wait 30 days!

Just as with any other type of case heard in the Circuit Court, a divorce decree may be appealed. If you are planning to remarry, be sure to wait thirty days from the date the Final Decree is entered (signed) by the judge.

10. Take care of any loose ends.

Now is the time to re-read your separation agreement and Final Decree to see what you need to do next. You may be required to start paying support, close out credit cards, sign the title to a car, refinance a house, elect COBRA coverage on a health insurance plan, prepare a court order to divide up a retirement account, or any number of other matters. If you have any questions at all about your obligations following your divorce, consult with a skilled family law attorney right away.