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How to Respond to a Complaint for Divorce

If you have received a Complaint for Divorce, you have 21 days from the date it was served on you in which to file an Answer, or an Answer and Cross-Bill. You do not have to file a response, but in some instances you must file a response in order to preserve your rights. If you choose to file an Answer, or an Answer and Cross-Bill, you must mail the original to the Clerk of the Court and a copy to the plaintiff's attorney. You should keep a copy for your records.

If you have been sued for divorce, you need to consider the following things to determine whether or not you need to file an Answer, or an Answer and Cross-Bill:

1. Are there minor children born of, or adopted during, the marriage, and is their custody, support, visitation, or paternity in dispute?
2. Is there property that was purchased during the marriage, or that is jointly titled, which needs to be divided?
3. Are there any debts incurred by you or your spouse that are now outstanding?
4. Are you in need of spousal support (alimony) now, or may you be in need of it in the future?
5. Does the Complaint allege a fault basis for divorce, such as adultery, cruelty, or desertion?

If you can respond to each of the five questions with a "No," then you may not need to file an Answer. You would want to check with the Clerk's office eventually to make sure the divorce has been completed and to get a copy of the Final Decree of Divorce. **Make sure your divorce is final for 30 days before you remarry**

If you decide you do not need or want spousal support and you do not file an Answer asking for such support, or reserving your right to ask for such support in the future, **you will forever waive (give up) your right to get spousal support from this person!**

If you decide you do not need or want to divide marital property and you do not file an Answer asking for such a division, or reserving your right to ask for such a division in the future, **you may forever waive (give up) your right to get a division of marital property.**

If you respond to any of the above five questions with a “Yes,” you should file an Answer, or an Answer and Cross-Bill. Your Answer must respond to each numbered paragraph by either admitting the information in the paragraph, or denying the information in the paragraph. Your Answer also can be followed by a Cross-Bill, which is your petition to the court for a divorce for the reasons set forth in your Cross-Bill.

It sometimes is difficult to prove fault basis for a divorce. If you have lived separate and apart for a year or more, then either you or your spouse can obtain a divorce on a no-fault basis, by proving the one-year separation.

If there are children, a need for spousal support, or property or debts that need to be distributed, in your Answer you need to ask for these things to be resolved. Each item should be requested in a separate paragraph. If you changed your name when you got married and you wish to return to a maiden name or a former married name, you may request that in your Answer as well.

Enclosed are forms that may be useful for you if you decide to file an Answer, or an Answer and Cross-Bill, to the Complaint for divorce which has been served on you. The enclosed form for an Answer and Cross-Bill would form a basis for pleading only if you wish to seek a divorce on no-fault grounds. If you decide to seek a divorce on fault grounds, you may wish to consult a lawyer of your choice.

The enclosed forms are not to be filed themselves but are guides from which you may wish to draw up your own Answer, or Answer and Cross-Bill.

If the Complaint served on you seeks custody of a child and an order has been entered in a Juvenile and Domestic Relations Court regarding custody, you should add a numbered paragraph to your Answer, or to your Answer and Cross-Bill, stating that a child or children has or have been born of the marriage, and stating the name(s) and birthdate(s) of each child and the court in which a custody order has been entered. You then may advise the court whether you wish custody (and visitation) issues to remain with the court that has entered a custody order, or whether you wish to have the Circuit Court where the divorce was filed decide custody (and visitation) issues.

If the Complaint served on you does not mention custody and there are issues of custody to be determined, if you use one of the enclosed forms, it will mean that you do not have a lawyer. In such case, you may prefer to try custody issues in the Juvenile and Domestic Relations Court. You can file for custody in such event by going to the Juvenile and Domestic Relations Court in your city or county and filing a petition for custody.

This information sheet does not deal with child support because you are not required to try issues regarding child support in the Circuit Court. If you nevertheless wish to adjudicate child support issues in Circuit Court, you may wish to obtain brief advice on that from your local legal aid office (call toll-free 1-866-534-5243) or from a private lawyer of your choice.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY/COUNTY OF _____

_____,

Plaintiff,

v.

CIVIL ACTION NO. _____

_____,

Defendant.

ANSWER

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Your defendant, _____, respectfully represents:

1. That the allegations contained in paragraphs (s) _____ and _____ of the Complaint are admitted.
2. That the allegations contained in paragraphs (s) _____ and _____ of the Complaint are denied and that she/he calls for strict proof thereof.
3. There are issues regarding (spousal support) (marital property) and (marital debts) to be adjudicated.
4. Defendant requests that an order be entered changing her name back to her maiden name of _____.

WHEREFORE, your defendant prays that the Complaint be dismissed and that costs of court be awarded against the plaintiff, that she/he be awarded spousal support, and that she/he be awarded a just determination regarding equitable distribution of marital property and marital debts.

DEFENDANT'S NAME

YOUR NAME
ADDRESS

CERTIFICATE OF SERVICE

I certify that a true copy of the above Answer was mailed to _____
counsel for the plaintiff, at _____,
_____, Virginia _____, on the _____ day of _____, 20__.

YOUR NAME

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY/COUNTY OF _____

_____,

Plaintiff,

v.

CIVIL ACTION NO. _____

_____,

Defendant.

ANSWER AND CROSS-BILL

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Your defendant, _____, for answer to the Complaint,
says as follows:

1. That the allegations contained in paragraphs (s) _____
and _____ of the Complaint are admitted.
2. That the allegations contained in paragraphs (s) _____
and _____ of the Complaint are denied and that she/he calls for strict proof thereof.

And for further answer, this to be treated in the nature of a Cross-Bill, your defendant
says:

1. That she/he adopts the allegations of paragraphs (s) _____
and _____ of the Complaint as part of this Cross-Bill.
2. That she/he should be awarded equitable distribution as to marital property and that
marital debts should be allocated in whole or part to the plaintiff.
3. That she/he should be awarded spousal support.

4. That she requests an order allowing her to resume her maiden name.

WHEREFORE, the defendant prays in this Cross-Bill that (the Complaint be dismissed and that costs of court be awarded against the plaintiff); (a decree be entered granting a final decree of divorce from the plaintiff on the grounds of separation for more than one year as of _____, 20__); (that she/he be permitted to maintain this suit in forma pauperis and that this Court authorize and direct all officers to render all needful services and process without any fees therefor, except what may be included in the costs recovered from the defendant); (that the defendant be awarded temporary and permanent custody of the minor child/children of the marriage, namely, _____); (that the defendant be awarded child support for the maintenance and education of the said child/children); (that the defendant be awarded a decree providing for equitable distribution of all marital property and that marital debts be allocated to plaintiff or fairly distributed); (that the defendant be awarded spousal support and maintenance); (that the defendant be allowed to resume the use of her maiden name, to-wit: _____).

DEFENDANT'S NAME

YOUR NAME
ADDRESS

CERTIFICATE OF SERVICE

I certify that a true copy of the above Answer and Cross-Bill was mailed to _____
_____ counsel for the plaintiff, at _____,
_____, Virginia _____, on the _____ day of _____, 20__.

YOUR NAME