

Instructions for Filing Do-it-Yourself Uncontested Default Divorce
(no children, no debt disputes, no property to divide)

IMPORTANT DISCLAIMER

These forms and instructions cannot replace the advice of an attorney. HIRING A LAWYER TO REPRESENT YOUR INTERESTS IS THE BEST WAY TO MAKE SURE YOUR RIGHTS ARE PROTECTED. Hiring an attorney may not cost as much as you think, especially if you just need to ask questions. There are lawyer referral services in Alabama which can help you locate or arrange a half-hour conference with an attorney in your area for no more than a \$25.00 fee. (In Madison County, call 539-2275. The statewide program can be reached at 1-800-392-5660.)

Because these forms were not designed specifically for you and your situation, and because the law is always changing, the organization or agency which gave you this packet MAKES NO CLAIM AS TO WHETHER THE USE OF THIS PACKET WILL ACHIEVE THE RESULTS YOU DESIRE, AND IT EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR THE CONSEQUENCES OF ANY ACTION YOU TAKE IN RELIANCE ON THE INFORMATION CONTAINED IN THIS PACKET. The organization or agency which gave you this packet IS NOT REPRESENTING YOU AND WILL NOT SEND ANYONE WITH YOU TO COURT. If you use these forms, you are on your own.

This packet should contain the following documents:

1. These instructions (7 pages);
2. Complaint for Divorce (3 pages);
3. Summons/Civil (Form C-34);
4. Affidavit of Substantial Hardship (Form C-10) (2 pages);
5. Child Support Information Sheet (Form CS-47);
6. Application, Affidavit, and Entry of Default;
7. Certificate of Commissioner;
8. Affidavit of Residency;
9. Plaintiff's Written Testimony (2 pages); and
10. Decree of Divorce (2 pages).

In addition, during the process of filing for divorce, you will need to ask the Clerk of Court about a Vital Statistics Form (also known as a divorce certificate).

*Last Revised
September 20, 2002*

This packet may be appropriate for you, but only if:

(Check the ones that apply to your situation.)

- At least one of the parties has lived in the State of Alabama, continuously, for the past six months;
- Your spouse will not fight the divorce;
- You and your spouse do not have any children together;
- There were no children born to the wife after the date of marriage, regardless of who the natural father is;
- There is no land that needs to be transferred or sold;
- You and your spouse have already divided up your belongings;
- There are no joint debts, and each spouse is willing to pay whatever bills are already listed in his or her own name; and
- No one is asking for alimony, a cash settlement, or any part of the other spouse's property, insurance, or retirement benefits.

**If there are children, joint personal belongings, financial assets, debt problems, employment benefits, or land-related issues in your marriage,
DO NOT USE THESE FORMS. YOU NEED TO CONSULT AN ATTORNEY.
Using these forms could cause you to lose valuable legal rights.**

Round 1: Fill out and file Complaint for Divorce, Summons/Civil, and Child Support Information Sheet. Pay filing fee or submit Affidavit of Substantial Hardship. Ask at the Office of the Clerk of Court for a Vital Statistics Form.

A. Complaint for Divorce

Figure out which county's courts should review your case. If you have lived in Alabama for the past six months and your spouse lives out-of-state, you may file the case in the county where you live. Otherwise, you may file for divorce only in the county where the two of you last lived together as husband and wife, or in the county where your spouse lives now. That county name goes in the top blank.

The person starting the divorce is the Plaintiff, and the other spouse is the Defendant.

Leave the space for the case number blank. The Clerk of Court will assign one at the courthouse.

The numbered paragraphs should be self-explanatory. Read them carefully. If any one of them is not true for you and your spouse, then this packet of do-it-yourself forms is probably not appropriate for your case.

Paragraph nine mentions restoring the wife to her maiden name. If you do not want to do this, draw a dark line through that paragraph and sign your initials in the margin of the page. The same is true for subparagraph c.

NOTE: *A vinculo matromonii* is Latin, and it means that you are seeking a final divorce

instead of a legal separation.

Fill in the date on which you plan to file your divorce case at the courthouse.

The address you use on these forms is where the court will mail your notices.

B. Summons/Civil

The top part of this form (Plaintiff, Defendant, county) should match the “Style” of the case on your Complaint for Divorce.

The Summons contains instructions for an official to deliver the divorce documents to your spouse. You, yourself, cannot deliver the divorce documents. It is not allowed. Instead, you must choose whether you want to send the papers by certified U.S. mail or by deputy sheriff. If you choose the certified mail option, there is a place for you to sign this form. Otherwise, leave all date and signature lines blank for the clerk and sheriff to fill in. Choosing the mail will require a certified mail fee of about \$8.15. You may also be required to fill out the certified mail slips (restricted delivery and return receipt requested). Ask the Clerk of Court in your county to be sure of these details. If you choose to have the papers delivered by a deputy sheriff, you may be required to pay a service fee of up to \$20.00. Once you have made your choice, check the appropriate box in the middle section of this form.

The blank after “Notice To” is where you write the full name and address of your spouse. The address you put in the “Notice To” line should be the mailing address, if you have chosen to serve your spouse through the mail, or the physical address, if you chose the deputy sheriff. Investigate, if necessary, to provide an address where your spouse will actually receive these documents. **If you cannot find your spouse to have the divorce documents officially delivered, your case will become too complicated for you to use these do-it-yourself forms.**

Since you are representing yourself, fill in your own name and address wherever the form asks for Plaintiff’s Attorney’s name and address.

The other parts of this form are for the clerk to issue and date the summons and for the delivery official to mark the date of service. Leave those blank.

C. Filing Fee or Affidavit of Substantial Hardship

Filing fees are different in every county and can range from \$144 to \$161. You should call the Clerk of Court in your county and ask how much it costs to file for divorce in that county. (The phone number may be in the county government section or blue pages of your local telephone book.)

Most offices will not accept personal checks. If you pay cash, pay in person, and ask for a receipt. Otherwise, a money order made out to the Clerk of Court will work.

If you truly cannot afford the filing fee, you may want to file an Affidavit of Substantial Hardship. This form asks for details about how much you earn (gross income or before taxes) and where your money goes each month. It is a form you must sign under oath in front of a Notary Public or at the office of the Clerk of Court, so be sure to tell the whole truth. The judge will review the form and may ask you to explain it to him or her, in person. If the judge decides that you really cannot afford the filing fee, he or she may allow you to delay paying the fee or forgive it altogether. Usually, one of the parties is ordered to pay the fee at the end of the case, so save your money and be prepared.

D. Child Support Information Sheet

If you are using these do-it-yourself divorce forms, you must not have any children with your spouse. This Form CS-47 is required anyway. All you need to do is check the box in the gray area that says “Not applicable.” You may leave all the rest blank.

E. Filing the Case at the Courthouse

File all of the above at the office of the Clerk of Court in the county you have determined is the right one for your case. You should have the original plus two copies of everything so that you can leave one for the court, provide one to the Clerk for delivery to your spouse, and keep one for your own records. Some larger counties have separate Clerk’s offices for divorces and other family matters. It is best to file the case in person and to stay there while the Clerk reviews your papers. Different counties have slightly different rules, so there may be something else you need that the Clerk can tell you about while you are standing there. Your case number will be assigned when you file the case, and your copies will be stamped with the time and date.

F. Ask About the Vital Statistics Form.

The Office of Vital Statistics keeps divorce certificates right along with marriage and birth certificates. Many counties expect you to fill out the form yourself. There is an official form you must use, and the Clerk of Court can provide you with one. It is smaller than a regular sheet of paper, and photocopies are unacceptable. Ask your Clerk when you file the divorce case whether filling out the form will be your responsibility.

YOU WILL NEED TO PROVIDE SOCIAL SECURITY NUMBERS AND DATES OF BIRTH FOR BOTH YOU AND YOUR SPOUSE ON THIS FORM.

Round 2: Watch for a Service Notice in the mail, and then start counting days.

Once the divorce documents filled out and filed in Round 1 have been delivered to your spouse, you will receive a computerized Service Notice in the mail from the Clerk of Court. It will note the date on which your spouse received the Complaint for Divorce. Count thirty-one days from the date on the notice. This is how long you must wait before you take the next step, as it is the time allowed for your spouse to decide whether to fight you on this case, and also the waiting period required for divorces under Alabama law. If your spouse writes back to the court, responding to your Complaint for Divorce, then your case will be set for trial, and these do-it-yourself forms will not work for you. Please recall that one of the requirements for using these forms is that you are sure your spouse will not contest the case.

You will also receive a notice from the Clerk of Court if the official delivery person could not find your spouse to deliver the papers. If this happens, you have one month to provide the Clerk of Court with a new or better address on a new Summons/Civil form. The Clerk’s office can provide you with an extra form.

Round 3: Fill out and file the Application for Entry of Default, Vital Statistics Form, and Certificate of Commissioner (if required).

After you have waited thirty-one days from the date shown on the Service Notice, you may file the next round of documents with the Clerk of Court. Have a second copy of each of these forms ready for the Clerk of Court to file stamp and return to you for your records.

A. Application, Affidavit, and Entry of Default

The top part of the form should match your earlier documents. By now, you should know your case number.

This form is your affidavit, so your name goes in the first blank, you are the Affiant, and there are two places where you need to sign. Please notice that you must sign this form in front of a Notary Public or at the Clerk's office. You will need to have picture ID with you to prove who you are.

Fill in the blank in paragraph 2 with the date from the Service Notice.

The very bottom of this form is for the Clerk's office to fill in.

B. Certificate of Commissioner

Most counties do not require that a Commissioner be appointed. Madison County may be the only one still using this method. In other counties, a Notary Public is good enough for any document that needs to be witnessed under oath. You should ask at your Clerk's office.

If your county does require a Commissioner to be appointed to witness testimony, you must fill out the top part of the attached form and submit it to the Office of the Clerk of Court to be issued. It will not be issued the same day you submit it.

Pick someone you trust who is over the age of nineteen, who is of sound mind, and who is not related to you or your spouse by blood or marriage. Ask that person if he or she would be willing to witness the signing of two affidavits, Plaintiff's Written Testimony and an Affidavit of Residency. That person's name goes on the top line, where the form says "TO."

The next blank is where you write the names of two witnesses. You will be one witness, and the other will be the person you choose to sign your Affidavit of Residency (see below).

Fill in the names of the Plaintiff and Defendant.

Leave the rest blank for now, and submit the form to the Clerk of Court. It will be issued and returned to you in a few days.

Round 4: Execute and file Plaintiff's Written Testimony and Affidavit of Residency. Submit Decree of Divorce.

If you are filing your case in a county that requires a Commissioner (such as Madison County), you must wait until after you have received the issued Certificate of Commissioner before you proceed. Everyone else can sign these forms from Round 4 and deliver them to the Clerk of Court at the same time as the documents in Round 3. These forms should be filed at the same Office of the Clerk of Court as the other forms, and you should have an extra copy of each ready to file-stamp for your own records.

A. Affidavit of Residency

Choose another person over the age of nineteen and of sound mind to sign your Affidavit of Residency. It cannot be the same person as your Commissioner. This person can be a family member. This person needs to be able to swear, under oath, that he or she knows you have lived within the State of Alabama for the past six months. The person you choose will be the Affiant on this form and will need to sign it in front of your Commissioner (if required) or a Notary Public. Your Affiant will need picture ID to prove his or her identity.

The top part of the form should match all of your other forms.

The Commissioner or Notary Public fills out the bottom part of the form.

B. Plaintiff's Written Testimony

This form takes the place of going to court and testifying in person.

Again, the top part of this form should match all of your other forms.

Your name goes in the first blank, as the person being sworn to tell the truth. The other blanks are about the dates and places of your marriage and separation.

Read the rest of the paragraphs carefully. If any one of them is not true for you and your spouse, then this packet of do-it-yourself forms is probably not appropriate for your case.

The last paragraph mentions restoring the wife to her maiden name. If you do not want to do this, draw a dark line through that paragraph and sign your initials in the margin of the page.

Sign this form in front of your Commissioner (if required by your county) or in front of a Notary Public.

C. Certificate of Commissioner

In Madison County, where Commissioners are required, now is the time for the Commissioner to fill out the bottom half of the form. The name of the Commissioner goes in the first blank, then the names of the witnesses (you and whoever signed your Affidavit of Residency), and the date of signing. The Commissioner then signs the form.

D. Decree of Divorce

Fill in the names of the Plaintiff and Defendant, the name of the county where you have filed your case, and the case number.

The paragraph about waiting 60 days to remarry is state law and is not negotiable.

Read paragraph 7. If you have crossed out the part about restoring the wife's maiden name in your Complaint for Divorce and in Plaintiff's Written Testimony, cross it out here, too, and put your initials in the margin next to the line you draw. Otherwise, fill in the wife's full name as you would like it to be after the divorce.

The Judge will sign and date the form after you submit all of these documents to the Clerk.

Round 5: Wait for the Clerk of Court to mail you your signed and certified copy of your Decree of Divorce.

Your divorce is not final until the Judge signs the Decree of Divorce. Some Clerk's offices will send you both your copy and your spouse's copy. It will probably be your responsibility to see that your spouse receives a copy of the signed Decree of Divorce. Keep your divorce documents in a safe place.