

SERVING THE DIVORCE PAPERS:

(HOW TO NOTIFY YOUR SPOUSE ABOUT THE DIVORCE)

Starting the Divorce:

- It is your responsibility to make sure that your spouse receives copies of all papers that you file with the court. If your spouse does not receive them in the proper way, then your divorce will be held up.
- At the beginning of the divorce, you will have to file (send to the Family Court) two documents: one is called a Summons, and the other is called a Complaint. The Summons notifies your spouse of the need to respond to the complaint. The Complaint is a request to the court that spells out the facts of your marriage, identifies your children and your property and tells the court what you want the court to do.
- You may get these forms at the courthouse or call and ask that they be mailed to you. Or you may go to the Judiciary Website at www.vermontjudiciary.org where you may fill in the forms and print them.
- If you do not have minor children, ask for Form #835 that is a packet that contains the Summons, Complaint and Notice of Appearance.
- If you have minor children, ask for Form #836, that includes a paper dealing with your children that you will need to fill out as well.
- If you are filing for Civil Dissolution, ask for either form #835cu or #836cu.
- Please see "Mechanics of Filing for Divorce" (Forms #21 or #22) and "How to Fill out Paperwork required to start a divorce" (#23), to find out all of the forms you need to fill out and the fees that are charged.
- The Court cannot act on your request for a divorce until it has proof that your spouse has received a copy of the Summons and Complaint.

Notice to the Other Spouse

- The Summons and the Complaint, Notice of Appearance and a Notice of any Programs or Hearings scheduled by the Court, all have to be served on your spouse. The Court must have proof that your spouse has received these important papers. There are a few different ways to provide proof to the Court that your spouse has been served:

Service if you have No Minor Children:

- If you have no minor children you are responsible to see that the Summons and Complaint, Notice of Appearance and Notice of Hearing- are served on your spouse in one of the following ways:

1. Acceptance of Service:

This is the most widely used way to serve papers. The Divorce Packet, which will contain the Summons and Complaint, Notice of Appearance, Interim Order and any Notices of Programs and any Hearings can be delivered by you to your spouse. You can actually hand the Divorce Packet to your spouse. If you serve your spouse in this way, you must get your spouse to sign and date a paper called an Acceptance of Service, (which is available at court), which you must then return to the court. By signing this Acceptance of Service, your spouse is not agreeing to any claims you have made in your Complaint, but is merely declaring that he or she has actually received a copy of the Summons, Complaint, and other paperwork.

2. First Class Mail with Acknowledgment:

The Summons and Complaint can be served by mailing them to your spouse along with an Acknowledgment (Form 820) for your spouse to sign and date and return to the court in a pre-paid envelope. If the Acknowledgment is not returned within a short time, you must serve the Complaint and Summons in another way.

3. Certified Mail:

In rare instances, when other methods have failed, the Summons and Complaint can be served by mailing them to your spouse, by certified mail, return receipt requested, with delivery restricted to your spouse. You must file an affidavit (statement under oath) in which you describe the steps taken in your unsuccessful attempts to serve your spouse by methods 1 or 2. If your spouse does not pick up the mail from the post office, you must serve the Complaint and Summons in another way.

4. Personal Service by Sheriff:

You can hire the Sheriff (or local constable) to serve the Summons and Complaint. This is the most expensive way, as you will have to pay approximately \$35.00 in fees to have the Sheriff do this. However, if your spouse lives out of state, or if the Sheriff has a hard time finding your spouse, your fees will be higher. If the Sheriff is successful, the Sheriff will fill out a Return of Service which you then have to file with the Court.

5. Publication:

In rare instances, when all other methods have failed, the court can order that service be made by publication. This means that a notice announcing the divorce action will be placed in the newspaper wherever your spouse is likely to be living, for three (3) or more successive weeks.

You will have to make arrangements for this and pay any fees that the newspaper charges. You will then need to return a copy of the notice to the court, with a statement from the newspaper as to when the ad was run.

6. Outside the State:

If your spouse lives in another state, the Summons and Complaint can be served in the same ways, except whoever delivers them will sign a document called an affidavit in which they swear to having delivered them.

- **In all circumstances, the Acceptance of Service, Acknowledgment of Service, Return of Service or the green card from the post office**

acknowledging the receipt of certified mail, must be returned to the Clerk of the Family Court by you, your spouse, the Sheriff or the post office.

Service if You Have Minor Children:

- If you have minor children, the Family Court clerk is responsible to see that the Summons and Complaint and Notice of Hearing are served on your spouse in one of the following ways:

1. Acceptance of Service:

At your request, if the divorce is "friendly," you may choose to deliver the papers yourself. If so, your spouse must sign and date an Acceptance of Service which you must then return to the court.

2. Certified Mail:

The Clerk will serve the papers on your spouse by mailing them to the address supplied by you, by certified mail, return receipt requested, with delivery restricted to your spouse. You will pay the mailing fees. If your spouse refuses to accept the certified mail, the court clerk can send the papers first class mail. (Note that simply not picking up the certified mail is not refusal).

3. First Class Mail with Acknowledgment:

The Clerk may also serve your spouse by using first class mail to deliver the documents to your spouse along with an Acknowledgment for him or her to sign and date and return to the Clerk, in a pre-paid envelope.

4. Sheriff:

If other methods fail, the Sheriff (or local constable) can serve the Summons and Complaint and Notice of Hearing. You must provide the correct and complete address with a description of how to find your spouse. You will have to pay about \$35.00 in fees to the Sheriff's office to accomplish this form of service. However, if your spouse lives out of state, or if the Sheriff has a hard time finding your spouse, your fees will be higher.

5. Outside the State:

If your spouse lives in another state, the Summons and Complaint can be served in the same ways, except whoever delivers them will sign an affidavit in which they swear (or affirm) to having delivered them.

- When you file your divorce, the clerk will ask you which of the above methods of service you prefer or if no request the clerk will serve by certified mail.
- **In all circumstances the Acceptance of Service, the green card from the post office acknowledging the receipt of service, the Acknowledgment of Service, or Return of Service must be returned to the Clerk of the Family Court by you, the post office, your spouse, or the Sheriff.**

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**

