

ANSWERING THE DIVORCE COMPLAINT AND PREPARING YOUR OWN COMPLAINT

If you are a Defendant in a Divorce: Preparing an Answer and Preparing a Counterclaim to the Complaint

Preparing an Answer:

- You have received a Summons and Complaint for divorce. The Summons tells you that you need to file an Answer to the Complaint within 20 days or a default judgment may be entered against you. In practice, if a written request is made to the court, the court will normally allow you to file an answer after 20 days.
- The answer tells the Court that you want to be involved and participate in the process and is simply a response to the statements in the Divorce Complaint. The complaint includes statements of where the parties reside and for how long, the date of the marriage, minor children born of the marriage, property of the marriage, other court actions involving the parties, the date of separation, and if either party is receiving public assistance.
- A form on which you may file your answer (Form #837 or #837cu if this is a Civil Dissolution) is available at the Court. It starts with numbered spaces 1 through 8 with admit or deny on the beginning of each line. These numbers correspond to items 1 through 8 on a Complaint. Circle admit to each numbered item with which you agree. Circle deny, if you disagree with a numbered item, and write what you believe to be true. If you need more room, attach additional pages to the answer form.
- You may also want to file what's called a "Counterclaim," form #838. (See section below.)

What happens if you do not file an Answer or Notice of Appearance:

- If you don't answer the complaint a default judgment may be entered against you. A Default Judgment is a decision made by the Court without your input and may be made without you being present. If you have children and you do not file an answer and do not show up for any scheduled court hearings, the court will make orders regarding the parental rights and responsibilities of your children (custody and visitation) and child support without your input. The court will also make decisions regarding your property and responsibility for debts in all divorce cases if you do not file an answer and do not notify the court that you want to participate.
- If you do not file an Answer but you appear at a scheduled court hearing, you will be allowed to participate in the proceeding because you have entered an appearance by showing up. You need to fill out a form entitled Pro Se Appearance (Form #831) and file it with the court so that the court knows how to contact you and where to send you information about your case, including notices of hearing. You may file a Notice of Appearance or appear at any time before the Final Hearing in your divorce, which will entitle you to participate in the process.

Preparing your own Complaint for Divorce (Counterclaim):

- A Counterclaim tells the Court that you also want a divorce and what "relief" (what you want the Court to do for you) you want in the divorce proceedings. A Counterclaim is in essence your own Divorce Complaint and should be filed with the court within 20 days of receiving service of the divorce complaint. (Form #838) It is usually filed with the Answer to the Divorce Complaint. Even if you don't file a Counterclaim with your Answer, the Court, upon request, will normally allow you to file it late unless it is unfair to the other spouse.

Why do you need to file a Counterclaim for Divorce?

- If you also want a divorce and your spouse has filed a Complaint for Divorce but changes his or her mind and wants to withdraw the Divorce Complaint, your Counterclaim will prevent the whole divorce from being withdrawn by your spouse without your consent. A divorce can be dismissed even after the court has entered temporary orders. Once a divorce is dismissed, all orders entered as part of the divorce action will also automatically be dismissed, including parental rights and responsibilities and child support orders.

Serving the Answer and Counterclaim:

- An Answer and/or Counterclaim, and all other court documents, must be filed with the Court and served on the other party. (See #25 Service of the Divorce Papers).

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