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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 Counterclaim. 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 do not file a response, the divorce decree will be finalized as the Complaint is written, and you will have to follow whatever requests or obligations are included. If you choose to file an Answer, or an Answer and Counterclaim, 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.

We strongly recommend that you have an attorney to represent you in responding to a divorce Complaint. The rules and pleadings are complicated.

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 Counterclaim:

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?

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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, because the other party might appeal the divorce judgment.**

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 respond to any of the above five questions with a “Yes,” you should file an Answer, or an Answer and Counterclaim. 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 Counterclaim, which is your petition to the court for a divorce for the reasons set forth in your Counterclaim.

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.

You will have to type your own Answer or Answer and Counterclaim, following the format of the pleading you received. Legal Aid is not representing you, nor can we guarantee that you will be successful if you choose to file an Answer on your own. It is always best to seek advice from an attorney if you are uncertain of how to best proceed.

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 Counterclaim, 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, you may prefer to settle custody issues in the Juvenile and Domestic Relations

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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 handout 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.

THIS INFORMATION IS NOT LEGAL ADVICE. *Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

**Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)**

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