

## **COUNTER-COMPLAINT FOR ABSOLUTE DIVORCE INSTRUCTIONS FOR COMPLETING DOM REL 94**

If you have been served with a Complaint for Absolute Divorce asking that your spouse be granted a complete dissolution (ending) of the marriage, and you want the court to grant you the divorce instead, then you need to file a Counter-Complaint (CCDR 94). You will need to file an Answer (CCDR 50) to their Complaint and when you file the Answer also file your Counter-Complaint. There are two ways you can get an absolute divorce: (1) obtain the services of an attorney to handle your case; or (2) file the case yourself by using the DOM REL forms. After a court issues a **JUDGMENT OF ABSOLUTE DIVORCE**, you can remarry.

### **YOU MAY NEED AN ATTORNEY IF:**

- the case is contested and your spouse has a lawyer.
- you or your spouse have a house, a pension, or a large amount of property or income. Even if it is a friendly divorce, you should talk to a lawyer before you sign any settlement papers or file anything in court.
- you and your spouse do not agree on who should have custody of the children.
- you think the court will need information that you cannot get.
- you have been married for close to ten years. Being married for ten years may entitle you to certain benefits.

**WHERE TO FILE:** You should file in the county in which you live, or in which the defendant lives or works. You do **not** have to file in the county in which you are married, if you no longer live there.

### **There are 8 steps you must follow in order to file the case yourself:**

#### **> STEP 1 — Completion of Form CCDR 94.**

**Page 1:** Fill in both your name, as Defendant/Counter-Plaintiff, and your spouse's name, as Plaintiff/Counter-Defendant. Then fill in current addresses and telephone numbers for both. If you do not have an address for the other side and have done everything you can to find the address, call the Legal Forms Helpline (1-800-818-9888) to see if resources are available in your county to help you.

**Line 1:** After printing your name in the space provided, fill in the month, day and year of your marriage. In the second blank, fill in the city or county and the state where you were married. Circle whether you were married in a religious or a civil ceremony.

**Line 2:** Check off all statements that apply in your case and fill in the blanks. Please refer to page 3, line 12 for a list of grounds for an Absolute Divorce.

**Line 3:** If you check off, “We have no children...,” remember to skip lines 5 through 9.

If you check off, “My spouse and I are the parents...,” write in the full names of all the children you and your spouse had together and their dates of birth.

**Line 4:** Fill in information about any court cases which have involved either yourself, the opposing party, or one of the children involved in this case. Provide information cases which may have been handled by this court, or any other court both in Maryland and outside the State.

**Page 2:**

**Line 5:** List cases concerning custody or visitation of the children where you have participated as a party, a witness or in some other manner. Attach the most recent court order for all of the cases that you list.

**Line 6:** List any other people who may believe they have a right to legal or physical custody or visitation with the children.

**Line 7:** Fill in the name of the person the children listed with now.

**Line 8:** List all other places where the children have lived for the last 5 years. Include the time period, placed lived, person with whom they lived, and that person’s current address.

**Line 9:** Check the box for the type of custody or visitation you want and fill in the names of the children involved.

**Line 10:** Circle whether or not you are seeking alimony. If you are seeking alimony, state why.

**Line 11:** If you are asking the court to make a decision about your property, check off the kinds of property you and your spouse have. If you or your spouse have debts, you may check the box marked “Debts” and attach a list of the debts to this form.

NOTE: Normally the court cannot order one party to pay the debts of another. However, the court may need to know what debts you have in order to determine the value of any marital property.

**Page 3:**

**Line 12:** Check each ground for divorce that applies and fill in the blanks. (The list begins on Page 3 of the form and continues onto Page 4). Choosing a certain ground or grounds will not necessarily result in a divorce being granted.

- **Two-year Separation** - If you and your spouse have lived apart from each other for at least two years without sexual intercourse with each other and there is no reasonable hope of getting back together, you may check this ground. There are

some important things to remember: during the last two years, if you and your spouse lived together at all, or if you have had sexual intercourse with your spouse during that time, or if you spent even one night under the same roof, you cannot get an absolute divorce based on a two-year separation. (For example, if you have been separated from your spouse for two years, but one night a year ago you had sexual intercourse with your spouse, then you have only been separated for one year.)

- **Voluntary Separation** - At least one year (12 months) ago, you and your spouse agreed to separate with the intention of ending your marriage. For that entire time you and your spouse lived in separate homes, did not spend a night under the same roof, and did not have sexual intercourse with each other. There can be no reasonable hope of getting back together. You may check this ground if all of these statements are true.
- **Adultery** - If your spouse has had voluntary sexual intercourse with a person other than you, you may check this ground for an absolute divorce. You must be able to prove that your spouse committed the act of adultery or that he or she had disposition and opportunity. Disposition is when your spouse and someone of the opposite sex acted romantically towards each other. Opportunity is a specific chance to have sexual intercourse with that person.
- **Actual Desertion** - If your spouse left you more than 12 months ago with the intention of ending the marriage and you and your spouse have not had sexual intercourse with each other during that time, you may check this ground.
- **Constructive Desertion** - If your spouse's actions have terminated the husband and wife relationship and made it impossible for you to continue the marriage and preserve your health, safety, and self-respect, and you have not had sexual relations with your spouse since the alleged actions, you may check this ground.
- **Criminal Conviction of a Felony or Misdemeanor** - This ground is explained on CC-DR 94.
- **Cruelty/Excessively Vicious Conduct Against Me or My Minor Child** - If your spouse has endangered your or your minor child's safety or health more than once and there is no reasonable hope that you and your spouse will get back together, you may check this ground. However, one incident may be enough if it was very violent and your spouse intended to harm you. The court will want you to prove that you cannot live safely with your spouse.
- **Insanity** - This ground is explained on CCDR 94.

## **Page 4:**

In the section that begins “FOR THESE REASONS. . .,” check off everything you want. **If you fail to ask for alimony and/or property before the divorce, you will never be able to get it. The court will not necessarily give you what you asked for.** (*For clarification, examples of real property are a house or land*).

*Complete the affirmation on the bottom of page 4, then date and sign the form.*

### **> STEP 2 — Other Court Documents.**

In addition to this form you may also need to complete and attach to the Counter-Complaint a:

1. Answer (CCDR 50) to the Complaint that was filed by your spouse;
2. Property Settlement Agreement, if you have one;
3. Financial Statement for Alimony or Child Support, CC-DR 30 or CC-DR 31, ONLY if you are requesting child support and/or alimony.

### **> STEP 3 — Filing Fee.**

Payment of a filing fee is generally required for filing these papers with the court. See *General Instructions*.

### **> STEP 4 — Filing Your Forms.**

Take the completed documents to the Clerk of the Court. Make sure to put the same case number on these documents that was on the Complaint that was filed by your spouse.

### **> STEP 5 — Service.**

You will need to have the other party properly served with a copy of all the papers you are filing. Service can be made by mailing a copy of the papers to the opposing party at their last known address. The Certificate of Service at the end of DOM REL 94 must be completed with the date the papers were mailed and the name and address of the opposing party or his or her attorney.

### **> STEP 6 — Marital and Non-marital Property.**

If property is an issue you may have to complete a Joint Statement of Parties Concerning Marital and Non-marital Property, DR 33, before your court date.

### **> STEP 7 — Child Support.**

> **STEP 8 — Hearing.**

At the hearing for Absolute Divorce, you will need a corroborative witness. This is a person who testifies for you and supports your version of the facts. The witness gives his/her testimony based on the facts he/she saw or heard. An important exception is that your witness can testify to what your spouse (but not you), told him/her.

**UNCONTESTED MATTER:** Examples of the most commonly used uncontested grounds are:

**Two-Year Separation:** Your witness should be someone who knows you well and has frequent contacts with you. Your witness must testify under oath that he/she knows:

- you and your spouse are married to each other;
- you and your spouse have been separated for two years;
- there is no reasonable hope of your getting back together;
- if there is an order of default, whether or not your spouse is in the military.

**Voluntary Separation:** Your witness should be someone who knows you well and has frequent contacts with you. Your witness must testify under oath that he/she knows:

- you and your spouse;
- you are married to each other;
- you and your spouse **BOTH** voluntarily agreed to separate;
- you and your spouse have been separated for one year;
- there is no reasonable hope of your getting back together;
- if there is an order of default, whether or not your spouse is in the military.

If you and your spouse signed a separation agreement under oath (sworn), which says that you separated “mutually and voluntarily” as of a certain date (at least a year ago), then your witness does not have to know it was voluntary. Even if you have this type of separation agreement, you will still need a witness to testify to the other requirements.

***CONTESTED MATTER: IF YOU HAVE ANY CONTESTED MATTERS, YOU SHOULD GET THE ASSISTANCE OF AN ATTORNEY WELL BEFORE THE COURT DATE.***