

**GUIDE 1**

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## KING @ LAW'S DIVORCE GUIDE SERIES

Simple Uncontested Divorce in Wake County, North Carolina



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## Chapter

# 1

## 1 Choosing Simple

*Verify whether a simple, uncontested divorce is right for you.*

A simple, uncontested divorce is where neither spouse asks the court to do anything other than sign a divorce decree. It is the fastest, cheapest, and easiest way to get divorced.


As a result, this approach has broad appeal. Who doesn't want their divorce to be fast and easy? However, adopting this approach in the wrong circumstances can cause problems or waive your rights down the road.

Think of this chapter as a checklist to see if a simple, uncontested divorce is right for you. If you are nodding along thinking "I can check that box" and "that's not a problem" on each sub-section, then a simple uncontested divorce might be the way to go.

### One Year of Separation


North Carolina law requires one year of "separation" before you can start the process for a divorce decree. Separation means you (a) lived in separate homes; (b) at least one spouse intended to permanently end the

#### CHECKLIST

 One Year of Separation

 6 Months NC Residency

 Alimony, Assets, Debts

 Separation Agreement

relationship/cohabitation; and (c) you didn't get back together for the full year.

During this year, you must live in separate homes, not just separate rooms. A temporary break-up does not start the one-year timer until at least one spouse intends to make the break-up permanent. Additionally, if you get back together or continue acting as though you were married, the timer doesn't start until you separate again.

Having sex with your spouse once during the period of separation does not reset the one-year timer. However, going on dates, holding hands, going to church or family events, cooking meals, and regular sex together can all be factors. These circumstances make it look like you were still together and not truly separated for a full year.

You do not need to complete any paperwork or file anything on the day one spouse moved out to mark the first day of separation. However, it is a good precaution to keep evidence of the day one spouse moved out, in case your spouse contests it later.

## 6 Months NC Residency

For a North Carolina court to have jurisdiction over your divorce, at least one spouse must live in North Carolina for the full six months leading up to your divorce filings. So long as one spouse meets this requirement, any court in North Carolina has the authority to make decisions over your divorce. However, typically you'll file for divorce in the courthouse for the county you live in.

## Alimony, Assets, and Debts

Once the court signs a divorce decree, neither spouse can pursue any new claims for pre-decree alimony or for the court to allocate property/debt between the spouses. Most people know if they want to pursue alimony but may not understand how property and debt works.

Spouses often get a divorce decree not realizing they are entitled to property that is in their spouse's name. There are a variety of complex rules, but generally the property/debt of both spouses is divided 50/50, regardless of whose name is on the account or title.

In other words, if your spouse has a lot of valuable things and accounts they acquired during the marriage (401k, accounts, cars, businesses, etc.) and you have less in your own name, you should talk to a lawyer before doing a simple, uncontested divorce.

## Separation Agreement

Serving divorce filings on your spouse may prompt your spouse to respond with counterclaims, prompting more serious litigation. In part, this is because filing for divorce forces the other spouse to pursue certain claims before a divorce decree is signed.

If you and your spouse made an oral agreement not to pursue any divorce-related claims, that agreement is not legally binding until it is in a signed, notarized contract. Your spouse can change their mind whenever they want.

A separation agreement is a contract between spouses regarding the terms of the divorce. It is not required. However, it can prevent your spouse from changing their mind, give you peace of mind that that your divorce filings won't prompt more serious litigation, and reduce arguments over the exact terms you've agreed to.



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## Chapter

# 2

## 2 Divorce Filings

*Complete the initial packet of documents that start your lawsuit for divorce*

Every divorce is technically a lawsuit, even if it's uncontested. As a result, filing for divorce requires all the formality and paperwork of filing a lawsuit. In fact, the documents and process that start your simple, uncontested divorce are similar to what someone would do to sue someone for a car crash, contract disputes, or other something else.

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### TO DO LIST

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 The Documents

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 The Process

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### The Documents

“Divorce filings” refers to a stack of documents that are filed with the court to start a lawsuit for divorce. The following is a list of the documents you’ll need to complete for this step with links to forms or templates for each document:

- A Cover Sheet ([form CV-750](#)): This tells the court what you are filing.
- A Complaint ([here's a template](#)): This is where you describe your lawsuit.
- A Verification ([here's a template](#)): This is where you promise what you said in the Complaint is true

- A Summons ([form CV-100](#)): This tells your spouse they have 30 days to respond.
- An SCRA Affidavit ([form G-250](#)): This is where you promise your spouse is not in the military.
- An SCRA Report ([created here](#)): This proves your spouse is not in the military.

Most banks will provide a notary for the Verification by appointment to customers for free. While you're there, you can get \$0 - \$265 in cash to pay the court's fees. The base court fee is \$225. The court charges \$10 more if you are reverting to a maiden name. It's \$30 additional if you want to serve the divorce papers on your spouse by sheriff rather than certified mail (discussed in the next step).

If you are poor, you can ask for a waiver for court fees and provide evidence of your inability to pay.

## The Process

Once you've completed all of the above documents, you'll need to make two copies. The originals will be filed with the court, one copy will be for your records, and one copy is for serving on your spouse.

Then, go to the Wake County courthouse at 316 Fayetteville St., Raleigh, NC 27601 (parking is a couple blocks away at 216 W. Cabarrus St.). Depending on which entrance you use, the clerk's office will be on the right-hand side just after you get through security and before the elevators.

Wait in line, tell the clerk you are filing for divorce, and give them all three copies. They will complete the Summons, stamp the documents, and return two copies to you. Then, you'll take the slip they give you to the cashier on the other side of the building to pay the fees.



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## Chapter

# 3

## 3 Service of Process

*Serve the divorce filings on your spouse*

Service of process is a mandatory process for notifying your spouse of the divorce lawsuit. It proves to the court that you gave your spouse an opportunity to contest the divorce or file counterclaims, and they did not do so for at least 30 days after being notified.


However, you can't just notify your spouse by email or text message. The court requires you notify your spouse using one of the very specific methods allowed by North Carolina's Rules of Civil Procedure. This section will go over each of the four ways you can serve the divorce filings on your spouse. The main thing that will determine which method of service you use is how cooperative your spouse is.

### Waiver

Your spouse can sign and notarize a document saying they: (1) received the divorce filings; (2) waive their right to formal service of process; and (3) waive their right to "Answer" (to respond to the lawsuit). You can find an example [here](#). If your spouse waives the right to "Answer", then this eliminates the requirement to give your spouse 30 days to potentially respond.

### SERVICE METHODS

 Waiver

 Certified Mail

 Sheriff

 Publication



Pro se spouses often do not complete the waiver correctly. As a result, it can cause complications and confusion. Therefore, this option is ideal for when either (a) both sides have lawyers handling it for them; or (b) the spouse to be served is in the military or in another country, making regular service of process difficult.

## **Certified Mail**

By far the most common method of service of process for simple, uncontested divorces is by delivering a copy to your spouse's home or work through USPS certified mail with a signature required and a return receipt. If your spouse or an adult signs for delivery at your spouse's home or work, they have been served.

## **Sheriff**

Service of process by sheriff is the most common way to serve a less cooperative spouse. Unlike USPS, the police officer will make multiple attempts to catch your spouse at home. You don't need your spouse to sign anything, but you do need them to answer the door when the police knock.

You start service of process by sheriff by paying a \$30 fee either at the clerk's office at the courthouse, or at the sheriff's office next-door. Most spouses don't like being bothered by the police, so this approach is usually avoided if you are trying to keep things amicable.

The police officer will complete the "Return of Service" form on the second page of the Summons. In most cases, nobody will update you on whether the officer was able to serve your spouse successfully. You'll have to call the courthouse a couple weeks later to ask if service of process was completed.

## **Publication**

Service by publication is a last resort. You can only use service by publication if: (1) your spouse is not cooperating; (2) you do not know

where your spouse lives or works; and (3) you have done everything you can to try to locate your spouse.

In other words, service by publication is how you serve the otherwise un-servable. Perhaps your spouse moved abroad to who knows where, went into hiding, or have started living off-grid.

Service by publication is often asked about, but rarely pursued. It is expensive and complicated. In most cases, you are able to locate your spouse instead.

However, if your spouse really is unfindable, you can serve them by publishing an ad in a newspaper near your spouse's last known location and proving to the court you did everything possible to locate them.



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## Chapter

# 4

## 4 Motion for Divorce

*Ask the court to sign a divorce decree*

The near-final step is another packet of legal documents that proves your spouse was served, asks the court to sign a divorce decree, and updates public records.

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### TO DO LIST

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 The Documents

 The Hearing

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### The Documents

Below is a list of all the documents you'll need, complete with links to forms or templates.

- Affidavit of Service of Process ([form CV-105](#)): This is where you promise you served the divorce filings on your spouse.
- Proof of Service of Process: What this is will vary depending on your method of service.
- A Motion Cover Sheet ([form CV-752](#)): This tells the court what type of motion you're filing.
- Motion for Divorce Judgment ([here's a template](#)): This is where you ask the court to sign a divorce decree.
- Certificate of Service ([here's a template](#)): This is where you promise you sent a copy of the motion and associated documents to your spouse.

- Judgment for Absolute Divorce by Clerk ([form CV-710](#)): This is the actual divorce decree you're asking a clerk to sign.
- Certificate of Divorce ([form DHHS 2089](#)): This is used to update public records.
- Envelope: You'll need to provide a stamped, self-addressed envelope the clerk can use to mail the signed divorce decree back to you.

## The Hearing

One terrific thing about the Wake County courthouse is that they follow the divorce by clerk statute §50-10(e). This means, so long as your divorce really is simple and uncontested, you can get a clerk to sign your divorce decree without a hearing before a judge.

You'll need to bring three copies of the above documents to the clerk's office at the courthouse. Then, mail one copy to your spouse after the clerk stamps the documents. Finally, wait 2-3 weeks for the clerk to process your request and mail a signed divorce decree to you in the mail.

If you don't get a divorce decree in the mail, you'll need to call or visit the courthouse to ask for an update.



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**Chapter**

**5**

## 5 Wrapping up

*You're Done! Well, almost.*

**T**he divorce decree is signed and public records will be updated soon. There is one task left. That's mailing a copy of the signed divorce decree to your spouse and filing another certificate of service promising you did so (template [here](#)).