

**VIRGINIA BEACH CIRCUIT COURT
UNCONTESTED DIVORCE FINAL DECREE CHECKLIST**

Counsel shall review the court's *Uncontested Divorce Manual* at www.vbgov.com/courts, <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Documents/UNCONTESTED%20DIVORCE%20MANUAL-Revised%20September%202014%202021.pdf> before moving to finalize the divorce.

The following will provide assistance in preparing a final decree for entry in an uncontested no-fault divorce. More complex cases or those involving unusual features may require additional elements. Please note this checklist only addresses requirements for the final decree, not other elements of divorce proceedings. It also assumes that the court's *Uncontested Divorce Manual* located on the court's web site has been reviewed and complied with.

Counsel are advised to check for legislative updates before preparing the final decree, particularly as concerns support notices. Statutory changes can be checked for free at <http://leg1.state.va.us/>.

The final decree **must** include the following:

I. Required factual information that must match the pleading upon which the divorce is granted (including any amendments), unless changed or corrected by the affidavit:

- A. Date of marriage
- B. Place of marriage (including city)
- C. Separation Date
- D. Names and DOB of *minor* children; see §20-49.1 for paternity issues
- E. Parties are over 18
- F. Is defendant in the military?
- G. Is defendant incarcerated or incompetent?
- H. Include the basis for subject matter jurisdiction as set forth in § 20-97

II. Grounds for divorce:

- A. Must match what is requested in the pleading¹ upon which the divorce is granted on (if started as no fault) and the affidavit of the moving party. For example, if the complaint asks for a divorce on one year separation grounds, the affidavit and decree must match.

III. Counterclaims:

- A. If the divorce is granted on the complaint and a counterclaim is filed, must order the counterclaim dismissed.
- B. If the divorce is granted on the counterclaim, must order the complaint dismissed.

IV. Separation agreements and addendas to same:

- A. Must be signed by both parties and filed with the court

¹ "Pleading" includes, as relevant, the complaint or counterclaim and any amendments.

- B. For a divorce based on living separate for 6 months, agreement must be signed by both parties **before** suit is filed.
- C. Decree must affirm, ratify, and incorporate by reference the Agreement into the final decree of divorce or the case must be set for hearing.
- D. **If the agreement is affirmed, ratified, and incorporated and it contains custody and/or support provisions, the specifics of those provisions do not have to be set out in the decree, but any applicable notices must still be included (see §§ 20-60.3, 20-107.1(H), and 20-124.5).** If you choose to include the specifics, the specifics must match the parties' agreement.

V. Support – spousal support must be addressed in all decrees, as well as child support if there are minor children, whether or not there is an agreement. Any reference to a “written, signed agreement” throughout this checklist includes an agreement embodied in the decree if the decree is signed by all counsel/parties as applicable, as well as any agreement read into the record. An agreement that is embodied in the decree should not be ordered affirmed, ratified, and incorporated.

- A. When an amount of support is ordered:
 - 1. Spousal support: if support is expressly ordered as stated in a written agreement must include § 20-60.3 (support notices for spousal or child support where there are minor children) or § 20-107.1(H) (spousal support where there are no minor children) notices as applicable and provide all required information.
 - 2. Child support: if support is expressly ordered as stated in a written agreement, or as stated in a juvenile and domestic relations court [“JDRC”] with a certified copy of the order filed with the court, or in an administrative order, must include § 20-60.3 notices and all required information.
- B. When support is ordered reserved:
 - 1. Spousal support: must be ordered reserved if there is no personal jurisdiction over the defendant, or if requested to be reserved.
 - 2. Child support:
 - (a) Must be ordered reserved (not “denied” or “not payable”) unless there is a written, signed agreement providing for support.
 - (b) Or may order child support reserved or jurisdiction declined if there is a JDRC or administrative order governing support, which will leave that order in place. If this option is chosen, should not include any terms from the order(s) and do not need any support notices.
- C. When spousal support is ordered denied: where there is personal jurisdiction, must be ordered denied for any party who did not request support or if there is no written, signed agreement for support
- D. Income deduction order – if support is to be paid by an income deduction order, the order must be submitted with the final decree, or the decree must state that the order is preexisting.
 - A. Must use the *required* federal form (available on VSB web site, www.vsb.org where log in access is required) if the order is not pre-existing.

- B. Order must be separate from the decree.
- C. If income deduction is voluntary, must clearly state that in the decree.

VI. Child custody and visitation awards:

- A. Ordered reserved:
 - 1. If no written, signed agreement, must order reserved.
 - 2. If there is a JDRC order custody can be ordered reserved or jurisdiction declined, leaving the order in place.
- B. Express terms ordered:
 - 1. If there is a written, signed agreement addressing custody and visitation, do not need to include the terms if the agreement is affirmed, ratified, and incorporated into the decree, but do need the § 20-124.5 notice.
 - 2. If there is a JDRC order, file a certified copy of the order and include the terms in the decree along with the § 20-124.5 notice.
 - 3. Terms in decree must match the agreement or order, as applicable.

VII. Equitable distribution:

- A. If there is personal jurisdiction:
 - 1. If there is an agreement, it is recommended that you not include the specific provisions for equitable distribution from that agreement in the decree, as that is not required.
 - 2. However, if there is an agreement and terms from that agreement *are* included in the decree, those terms must match the agreement.
 - 3. If there is personal jurisdiction and you want to reserve equitable distribution, *see* § 20-107.3(A) for the requirements. This requires a hearing.
 - 4. If none of the above apply, may be ordered denied.
- B. If there is no personal jurisdiction:
 - 1. Whether or not there is a written, signed agreement, must order equitable distribution reserved.
 - 2. If there is a written, signed agreement must state that “the personal obligations contained in the parties’ agreement may not be enforced against the defendant as the court lacks personal jurisdiction over the defendant.”

VIII. Other required information in the decree:

- A. § 20-111.1(E) notice – must be in decree, must be bolded, rest of decree must not be bolded. It can be block copied from here: <http://law.lis.virginia.gov/vacode>.
- B. Transfer to JDRC – if support, custody, and/or visitation are granted or reserved, decree must transfer at least enforcement to a named Virginia JDRC (and preferably transfer all issues related to those matters). If transferring out of state need only name the state.
- C. Stricken from docket – must order removed or stricken from the docket.