

LEGAL SERVICES OF NORTHERN VIRGINIA

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Pro Bono Uncontested Divorce Clinic Handout

Includes the Questionnaire

September 26, 2009

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The Legal Services of Northern Virginia (LSNV) *Pro Bono* Uncontested Divorce

Project assists eligible clients in getting an uncontested divorce without having to pay a fee to an attorney. This document provides you with an explanation of how the program works, and what is expected of you.

1. WHAT IS AN UNCONTESTED DIVORCE?

An uncontested divorce is a divorce where there are no contested issues between the parties. If there is any issue between the parties that has not been resolved by an agreement or a court order, then a divorce is not uncontested.

2. DO I QUALIFY FOR AN “UNCONTESTED” DIVORCE WITH HELP FROM LEGAL SERVICES OF NORTHERN VIRGINIA?

You may qualify for an uncontested divorce through LSNV if:

(1) Your household income and assets are within our eligibility limits;

AND

(2) Either you or your spouse is both a resident and domiciliary of Virginia for the six months immediately preceding the filing of the divorce;

AND

(3) You and your spouse have **no** minor children born or adopted during the marriage **and** you and your spouse have a written separation agreement [that you and your spouse sign saying that you have separated on a stated date and that you intend the separation be permanent] **and** you and your spouse have been separated without interruption [and you have intended that separation to be permanent] at least 6 months;

OR

(4) You and your spouse have **no** minor children born or adopted of the marriage **and** you and your spouse have been separated without interruption [and you have intended that separation to be permanent] for at least 12 months;

OR

(5) You and your spouse have minor children that were born or adopted during the marriage **and** you have an agreement with your spouse or a court order that determines the custody of the children and child support **and** you and your spouse have been separated without interruption [and you have intended that separation to be permanent] at least 12 months.

It is important to remember that in order to qualify for an uncontested divorce through LSNV, all marital property disputes, child custody and support matters, and spousal support matters must be resolved by court orders or separation/property settlement agreements.

3. HOW DO I START THE PROCESS OF AN UNCONTESTED DIVORCE THROUGH LSNV?

LSNV holds monthly family law clinics. Prior to the clinic you will be interviewed over the phone by a volunteer, who will prepare a memorandum of your situation. At the clinic you will meet with a volunteer paralegal to review any documents you have, such as court orders for custody or support, or a property settlement agreement. The volunteer paralegal will also accompany you to your meeting with the pro bono family lawyer who will give you advice based on the interview memorandum and any other information you or the volunteer share with him. After the consultation with the pro bono attorney, the volunteer will see that you are given the documents the pro bono attorney decides you should get. The volunteer may also help you understand [and perhaps help you fill out] the "Legal Services of Northern Virginia's Divorce Questionnaire." LSNV must have your completed Divorce Questionnaire and all relevant court orders in order to refer your uncontested divorce case with a pro bono attorney. If such a referral is appropriate, LSNV will attempt to match you with an attorney to handle your divorce free of charge. You may still be responsible for certain court costs, such as filing fees, as described below.

4. WHEN WILL I BE ASSIGNED AN ATTORNEY?

After LSNV receives all of the necessary information and papers from you, and you qualify for an uncontested divorce, LSNV will *try* to refer your case to an attorney to handle the divorce for no fee. This placement process may take as long as a month after you have given LSNV all of the necessary paperwork.

5. WHAT WILL I HAVE TO PAY?

If your uncontested divorce is placed with a pro bono attorney for LSNV, you will not have to pay any attorneys' fees. You may, however, have to pay certain court costs. Some or all of these court costs may be waived by the court if your attorney files "Petition for Proceeding in Civil Case Without Payment of Fees or Costs;" this is a pleading that asks the Court to waive some, or all, of the following fees. Whether the fees are in fact waived will depend on the Judge who handles the petition. A pro bono court reporter can usually be found if your case requires one.

The fees you may have to pay could include:

<u>Fees</u>	<u>Approximate Cost</u>
(1) filing fees	\$84
(2) sheriff's service	\$12
OR publication fee	\$25
AND/OR mailed notices	\$4
(3) court reporter (if spouse is served by publication and your case cannot be filed in either Alexandria or Fairfax)	\$125
(4) name change	\$21

6. WHO DO I CALL IF I HAVE QUESTIONS AFTER I HAVE BEEN ASSIGNED TO A PRO BONO ATTORNEY?

Once you have been assigned a pro bono attorney, speak first to that attorney about any questions or concerns you have regarding your uncontested divorce case.

7. WHAT PAPERS SHOULD I HAVE WITH ME WHEN I ATTEND THE UNCONTESTED DIVORCE CLINIC?

If possible, you should have with you a copy of **all** of the following documents when you come to the uncontested divorce clinic:

- (1) Picture ID (for example, a driver's license, passport, etc.);
- (2) Marriage Certificate for your current marriage;
- (3) Custody agreement or court order (if you have children with your spouse);

- (4) Child support agreement or court order (if you have children with your spouse);
- (5) Any divorce pleadings/paperwork that you or your spouse filed;
- (6) Any orders of discharge from bankruptcy proceedings by you or your spouse;
- (7) Any property settlement agreements signed by you and your spouse;
- (8) Social Security number or drivers license number for you and your spouse;
- (9) Social Security number for any minor children you have with your spouse;
and
- (10) Name, address and telephone number of a friend/relative in Northern Virginia who can be your witness at the uncontested divorce hearing.

8. WHAT IF I DID NOT BRING ALL OF THE INFORMATION REQUESTED TO THE UNCONTESTED DIVORCE CLINIC?

You will be given a self-addressed envelope to mail copies [only] of any additional information or papers to LSNV, 6066 Leesburg Pike, Suite 500, Falls Church, VA 22041.

Please be aware that if we do not receive all necessary, additional information from you within one month we will close your file and you will have to re-apply for assistance.

9. WHY DO I NEED A CORROBORATING WITNESS FOR MY UNCONTESTED DIVORCE HEARING?

The facts that justify your request for a divorce must be proven, either at an ore tenus hearing, a brief, ten-minute hearing in court with you, your pro bono attorney, and your corroborating witness or by depositions upon written questions, if your case is in Alexandria or Fairfax. corroborating witness is someone other than your spouse who can testify, under oath, that (a) you or your spouse have lived in Virginia and considered Virginia to be home for the six months before the divorce case was filed and (b) you and your spouse have been separated for the required separation period. Your witness needs to be someone who has been to your home since you separated from your spouse and knows that you have not resumed living with your spouse or reconciled your marriage. Your witness can be a friend or family member or a boyfriend or girlfriend.

10. WHAT IS A SEPARATION AGREEMENT OR PROPERTY SETTLEMENT AGREEMENT?

The separation agreement that can enable a couple without minor children to qualify for a divorce based on only six months of separation only needs to be a writing that you and your spouse sign saying that you have separated on a stated date and that you intend the separation be permanent. A full separation agreement, or property settlement agreement, is a written agreement between you and your spouse resolving all issues of the marriage, such as property, custody or child and/or spousal support. This agreement can be very complex or very simple (please see Sample Property Settlement Agreement below for a sample separation agreement).

Please be advised that LSNV's Uncontested Divorce Project cannot assist you in drafting a separation/property settlement agreement if you and your spouse do not agree on everything.

11. WHAT IF I DO NOT HAVE A WRITTEN AGREEMENT OR COURT ORDER FOR CUSTODY OR CHILD OR SPOUSAL SUPPORT?

You should promptly contact the Court Service Unit of the Juvenile and Domestic Relations ("J&DR") District Court in the city or county where the child resides and make an appointment to file *separate* petitions for custody, visitation and child support for *each* minor child you have with your spouse. A spousal support (alimony) petition may also be filed in the J&DR Court in the city or country where you reside. There is a \$25 filing fee for custody per family, i.e., you will pay \$25 if you file for custody of one child or if you have more than one child. The phone numbers for the local courts are:

Alexandria J&DR - Court Service Unit:	(703) 838-4144
Arlington J&DR - Court Service Unit:	(703) 228-4600
Fairfax J&DR - Intake Unit:	(703) 246-3040
Loudoun J&DR - Court Service Unit:	(703) 777-0303
Prince William J&DR - Intake Unit:	(703) 792-6210

After you have filed a petition for child support, you should also consider applying to the Division of Child Support Enforcement ("DCSE") for assistance, by calling (800) 468-8894. DCSE is a Virginia government agency that will help you, free of charge, to determine the correct amount of child support that should be paid in your particular case. *Be sure to tell DCSE that you have a date on which your case has been set for a court hearing.* Please be advised that when you call DCSE you will often be placed on hold for a significant amount of time. You can also contact DCSE directly by visiting their office, which is located at 3953 Pender Drive, Fairfax, Virginia, 22030.

12. WHAT IS SPOUSAL SUPPORT?

Spousal support, also known as alimony, is the obligation of one spouse to pay a certain amount of money to the former spouse to help cover living expenses. In Virginia, spousal support is not automatic, and is awarded at the discretion of the court. There are many complex factors that can influence whether spousal support will be ordered by a judge, such as the length of the parties' marriage, the ability of a spouse to pay support to the other, and if there is need for support. If both spouses can support themselves from their own earnings, it is unlikely for any court to award spousal support. A Virginia court can award spousal support for an indefinite period of time, or a fixed period of time. A Virginia court can also award "*pendente lite*" spousal support, which is spousal support to be paid during the pendency of the litigation. **Unless spousal support is provided for in an agreement between the spouses or a court order, the right to seek an award of spousal support will be lost by getting an uncontested divorce.**

13. WHAT IF MY SPOUSE AND I OWN PROPERTY TOGETHER?

The division of property, also known as "equitable distribution," is done either through a property settlement agreement between you and your spouse, or by the court after a hearing. A divorce court has the power to divide marital property between husband and wife, and to require that marital debt be paid by either husband or wife. However, a divorce court only has the power to make an equitable distribution award of marital property if the defendant spouse has been located and actually served with court papers.

The term "marital property" means any property acquired by you or your spouse during the marriage prior to the final separation date. This does not include property that you, or your spouse, have received through an inheritance or as a gift.

Examples of marital property may include money earned during the marriage; financial accounts or investments created from the earnings of either spouse during the marriage; and retirement benefits earned during the marriage. In order to qualify for an uncontested divorce, you must have resolved the division of any marital property through a property settlement agreement. Once a divorce is finalized you cannot go back and argue over property issues.

14. WHAT ABOUT RETIREMENT BENEFITS?

Retirement benefits may include, but are not limited to, the following: 401(k) plans, pension plans, IRA accounts, 457(b) plans, ROTH accounts, and 403(b) plans.

Retirement benefits earned by you or your spouse during the marriage are considered to be marital property. If you think or know that your spouse has a retirement account(s), you should consult with an attorney before signing a property settlement agreement and/or filing for an uncontested divorce in order to be advised of your rights.

15. WHAT ABOUT SOCIAL SECURITY BENEFITS?

If you have been married at least ten years when you are divorced, you may be able to claim Social Security benefits based on your former spouse's employment. You should speak with an attorney about whether or not you have a claim to these benefits.

16. WHAT IF MY SPOUSE AND I HAVE MARITAL DEBT TOGETHER?

Marital debt is any debt incurred by you or your spouse during the marriage, whether that debt is in both parties' names or not. A property settlement agreement between you and your spouse or a final divorce decree can allocate each party's responsibility for the marital debt. The court must consider a number of factors in deciding how to allocate marital debt between the spouses, including the ability of each spouse to pay a share of the marital debt. Please be advised that creditors can still seek to recover payment of a marital debt from either spouse, and are not limited by any agreement between the spouses or decision of a court allocating primary responsibility for that creditor's claim to one spouse. A divorce court only has the power to make an allocation of responsibility for marital debt if the defendant spouse has been located and actually served with court papers. If you and your spouse have marital debt that has not been resolved through a property settlement agreement, you may not qualify for an uncontested divorce.

17. WHAT IF MY SPOUSE OR I FILE FOR BANKRUPTCY AFTER THE DIVORCE?

A spouse [or former spouse] who files a chapter 7 bankruptcy case will not be discharged of the obligation to the other spouse to be responsible for paying a marital debt, if that obligation is imposed by a written agreement between the parties or by a divorce decree. Even a Chapter 13 bankruptcy may not enable s spouse to escape that obligation, because of the very broad interpretation given by the courts to what is a “domestic support obligation.”

18. WHAT IF I WANT TO TRY MEDIATION?

The Northern Virginia Mediation Service (“NVMS”) offers mediation services on a sliding scale, with the hourly rates varying according to the ability to pay. You can contact Ms. Kinsey Miller, Civil & Court Mediation Program Coordinator for NVMS at (703) 993-1311 or dmillere@gmu.edu or Lou Nuzzo, Esq., NVMS’ family mediation coordinator, at (703) 993-4312 to find out more. If you want NVMS to share the mediator’s case report and your evaluation of the mediation with LSNV, be sure to sign the NVMS forms that will permit that.

19. WHAT IF I NEED AN ATTORNEY FOR A DIFFERENT LEGAL MATTER?

LSNV attorneys assist eligible clients in domestic violence/family law cases, consumer cases and Chapter 7 bankruptcies.

You can also contact the Virginia Lawyer Referral Service for a 30 minute initial consultation with a lawyer for a small fee. At the end of the initial consultation, you can decide whether you want to hire the lawyer to represent you. Please contact the appropriate lawyer referral service based on where you live:

Alexandria Lawyer Referral Service: (703) 548-1105

Arlington Bar Association Lawyer Referral Service: (703) 228-3390

Fairfax Bar Lawyer Referral Service: (703) 246-3780

Prince William Bar Lawyer Referral Service: (703) 393-2306

Virginia State Lawyer Referral Service: (800) 552-7977

Warning about what you will be giving up if you get an uncontested divorce through LSNV’s Uncontested Divorce Project without first getting a written agreement about spousal support and/or equitable distribution of marital property and marital debt:

If you do not get an award of spousal support (alimony) as part of your divorce, you will lose the right to ask for it, forever. The same is true for (a) getting your fair share of your spouse’s retirement benefits, if any, or any other marital property in your

spouse's name or possession to which you may have rights, or (b) having your spouse required to be responsible for some or all of the debts accumulated during your marriage. Remember, except in rare cases, LSNV does not assist contested divorce cases, i.e., divorces where marital property and/or debt, support or custody is at issue. If you are interested in seeking spousal support or a share of marital property or the allocation of joint debt to your spouse, you must take care of these issues independently and then reapply for our services for an uncontested divorce.

Unless LSNV has entered into a written agreement with you to represent you with respect to issues of child custody, child support, spousal support, or equitable distribution, you must understand that LSNV will not be acting as your attorney in those areas. LSNV is giving you the general information contained in this document so that you will have a better chance of success in representing yourself, without any attorney, in seeking either an agreement with your spouse or a court determination about issues of child custody, child support, spousal support, or equitable distribution.

APPENDICES

SAMPLE PROPERTY SETTLEMENT AGREEMENT

_____ 4, 20__

Jane Smith and John Smith were married on _____ 12, 20__ in _____, VA. The parties have __ children together. The parties separated on or about _____ 2, 20__. The parties agree that they have no marital debt and that Jane shall keep the bedroom furniture, and all other property in the apartment belongs solely to John. The parties further agree that this agreement resolves any and all issues related to their marriage.

I swear (or affirm), under penalty of perjury, that the above is true and correct.

Signature of Affiant

Signature of Other Affiant

State of _____

City/County of _____; to-wit

Sworn and subscribed to before me this _____
Date

Notary Public

My Commission expires: _____
Date

Virginia Commission No.

UNCONTESTED DIVORCE QUESTIONNAIRE

LEGAL SERVICES OF NORTHERN VIRGINIA

6066 Leesburg Pike, Suite 500
Falls Church, VA 22041

Phone: (703) 778-6800

(1) Please complete the following information about yourself:

(a) What is your first, middle and last name:

(b) Do you want to return to your former (maiden) name once you are divorced (if applicable): Yes No If yes, what is your maiden name:

(c) What is your current address: _____

(d) Is this the address where you currently live: Yes No If No, what is your current address? _____

(e) What is the County or Independent City of your current address: _____

(f) What is your home phone: _____

(g) What is your work phone: _____

(h) What is your cell phone: _____

(i) What is your race: _____

(j) What is your Social Security number: _____

(k) What is your driver's license number and State that issued the driver's license:

(l) What is your date of birth: _____

(m) How many times have you been married *before* this marriage: _____

(n) What is the highest grade you completed in school (include both high school, college, graduate school): _____

(2) Please complete the following information about your spouse:

(a) What is the first, middle and last name of your spouse: _____

(b) What is your spouse's former (maiden) name (if applicable): _____

(c) What is your spouse's last known address: _____

(d) Is this the address where your spouse currently lives: Yes No

(e) If you do not know your spouse's address, what is the address where he/she works:

(f) What is the County or Independent City of your spouse's last known address: _____

(g) What is your spouse's home phone: _____

(h) What is your spouse's work phone: _____

(i) What is your spouse's race: _____

- (2) Army (3) Air Force
- (3) Marines (4) Navy

(g) Is your spouse currently in jail: Yes No
(1) Why is your spouse in jail _____

(2) How long will your spouse be in jail (if you know) _____

(3) What jail your spouse is in (if known) _____

(4) Please provide the following information for your Corroborating witness: [You will need someone to go to court with you to certify to the court that you are a resident of Virginia and that you have been separated for the proper length of time.]

(a) Name, address and phone number(s) of someone who can be your corroborating witness:

(b) What is your relationship to this witness [e.g., relative, friend]: _____

(c) Length of time you have you known this witness: _____

(d) How often has the witness actually visited your home since the date of your permanent separation from your spouse: _____

(5) Please provide the following information about prior attorney involvement:

(a) Have **you** met with an attorney about your divorce: Yes No

(b) If yes, give the attorney's name, address and phone number(s):

(c) What did the attorney do for you: _____

(d) Has your **spouse** met with an attorney about the divorce (if known): Yes No

(e) If yes, give the attorney's name, address and phone number(s) (if known):

(f) What did the attorney do for spouse (if known):

(g) Have any papers been filed in court in connection with your marriage: Yes No

(h) If yes, have you provided LSNV with a copy of those papers: Yes No

(i) What is the current status of the court case(s): _____

(6) Please provide the following information about your children:

(a) Were any children **born** to **both** the husband and the wife: Yes No
If "YES" please answer questions (b) through (e)

If "NO" please proceed to question (8)

(b) For all of you and your spouse's children younger than 19 or still attending high school, please provide the first, middle and last name, Social Security number & date of birth for each child:

(c) Has the issue of paternity ever been raised for any child of born during your marriage:
Yes No

(d) What was the result of the paternity test: _____

(e) Has custody or visitation for the minor child(ren) born during the marriage been determined by a written agreement or by a court order: Yes No

You must provide us with a copy of the written agreement or court order for the custody and visitation of each child born during the marriage if the child is younger than 19 or still attending high school. If you do not yet have such an agreement or court order for custody and visitation, you must get one before you can proceed with an uncontested divorce.

(7) Please provide the following information regarding child support and health insurance:

- (a) Has child support been determined for all of the children born during the marriage who are younger than 19 or still attending high school: Yes No
- (b) Is child support being paid by you or your husband/wife on a timely basis:
Yes No
- (c) If not, what is the amount of the arrearage [the total amount of unpaid child support] (if known):\$ _____
- (d) Has a written agreement or court order required either you or your spouse to provide health care coverage to the minor child(ren) born during the marriage:
Yes No
- (e) What is the name of the health insurance policy and the policy number and/or group number:

You must provide us with a copy of the written agreement or court order for child support and health insurance (typically child support and a health insurance obligation are in the same agreement or court order). If you do not have an order or agreement for child support, you must get such an agreement or court order before you can proceed with an uncontested divorce.

(8) Please provide the following information regarding spousal support:

- (a) Has spousal support been required by a written agreement or court order:
Yes No
- (b) Is spousal support being paid by your spouse on a timely basis:
Yes No
- (c) If not, what is the amount of the arrearage [the total amount of unpaid spousal support] (if known): _____
- (d) Do you need or want spousal support from your spouse:
Yes No

You must provide us with a copy of the written agreement or court order for spousal support. If you need or want spousal support, you must get a court order or an agreement from your spouse before your case can be referred to a pro bono attorney for an uncontested divorce. Unless you have already established your right to spousal support by agreement or by court order, when you get an uncontested divorce you will lose your right to spousal support forever.

(9) Please provide the following information regarding any agreement between you and your spouse:

- (a) Is there a written agreement between you and your spouse, or a court order, that has

not been provided to LSNV: Yes No

(b) If yes, you must provide copies of all written agreements or court orders relating to the ending of your marriage.

(10) Please provide the following information regarding you or your spouse's retirement benefits from employment:

(a) Does your **spouse** have any retirement benefits from employment, like a 401k or the right to a pension upon retirement that you are aware of:

Yes No

(b) Do **you** have any retirement benefits from employment, like a 401k or the right to a pension upon retirement that you are aware of:

Yes No

(c) Do you have a written agreement that resolves the issue(s) of retirement benefits:

Yes No

If retirement benefits are at issue, and are not agreed upon by you and your spouse through a written agreement, you cannot proceed with an uncontested divorce. You will need to contact an attorney to assist you in the division of this portion of marital property.

(11) Please provide information about the following property matters:

(a) House: do you and your spouse own a home together that was purchased during the marriage and/or is jointly titled to you and your spouse:

Yes No

(b) Motor vehicles: do you or your spouse, whether alone or together, own a **motor vehicle** (car, van, truck, motorcycle):

Yes No

(c) Financial accounts: do you or your spouse, either separately or together, have any checking or savings accounts, money market accounts, certificates of deposits (CDs), stocks or bonds at a financial institution (bank, credit union):

Yes No

You will need to have a written agreement regarding any of the property addressed in 11 (a) through (c) in order to be eligible for an uncontested divorce through LSNV.

(12) Please provide the following information regarding marital debt: [Marital debt is debt that was incurred during the time you and your spouse from the date of marriage until the date of your permanent separation. Marital debt includes credit card debts, personal or business loans, student loans, car loans, loans from friends/family, mortgage, etc.]

- (a) Do you or your spouse, either alone or together, have any debt that accrued during the marriage: Yes No
- (b) Has any marital debt resulted in a judgment against you: Yes No
Provide the following information about the judgment (if known):

(1) Name of the creditor _____

(2) Amount of the judgment \$ _____

(3) Is your spouse also responsible for this debt Yes No

(4) Have any garnishments been issued against you and your spouse for this debt
Yes No

(5) How much you still owe on the judgment amount \$ _____

- (c) Is there a *written agreement* between you and your spouse about who is responsible for marital debt: Yes No

You will need to have a written agreement regarding the division of any marital debt in order to be eligible for an uncontested divorce through LSNV.

You should get a free credit report by in order to find out what debts your husband/wife may have run up in his/her *or your* name without your knowledge. Call toll free to (877) 322-8228 or go online <https://www.annualcreditreport.com/cra/index.jsp> You do *not* need to get your "credit score", which will cost you money.

(13) Additional information and documentation needed if you wish to receive a waiver of all court filing fees for your divorce: [If you want to avoid having to pay the court filing and service fees for your divorce, you will need to provide documents to show that you qualify for waiver of some or all of these fees. Your pay stubs and/or public benefits statements must accurately show your *average* monthly income from **all** sources *and that of any other members of your household*. In addition, you need to provide information about: your average monthly medical expenses, if they are both unusual and continuing; any court-ordered support you are paying; your average monthly expenses for work-related child care, and any other exceptional expenses] **If you will be able to pay these fees and do not need a waiver, then you do not need to provide these documents.**

- (a) Have you given LSNV your financial information that shows **all** of your income *and those in your household*: Yes No
- (b) Are all pay stubs that you have provided to LSNV labeled with the length of the pay period [e.g., weekly, biweekly, twice a month, monthly]: Yes No
- (c) Are the pay stubs that you have provided to LSNV typical of your earnings during an average pay period: Yes No
- (d) What public benefits, such as food stamps, subsidized housing, government housing, Supplemental Security Income, do you receive:

(14) **Questions for LSNV:** do you have any questions that have not yet been answered? If so, write them below:

DOCUMENTS CHECKLIST:

- ___ Marriage Certificate
- ___ Current Custody Order (if applicable)
- ___ Current Child Support Order (if applicable)
- ___ Current Spousal Support Order (if applicable)
- ___ Property Settlement Agreement (if applicable)
- ___ Other Documents

Name of Interviewing Attorney or Paralegal

Organization of Volunteer (NCAPA, Freddie Mac or LSNV)

Name of Interpreter, if any

Organization of Interpreter

Date of Interview

Time Spent