

## ***The Top 20 Most Common Mistakes in Filling Out and Filing Uncontested Divorce Form Documents in New York Which Cause Delays***

- 1) Names, dates, other information in documents do not match up throughout the papers
  - *For example, Plaintiff enters name as Mary Smith on Summons and Mary Drew Smith on Complaint.*
  - *For example, the children's dates of birth are different in the Verified Complaint and the Plaintiff's Affidavit or are spelled differently or some forms contain middle names and initials and others are different.*
  
- 2) Mistakes that Could Have been Avoided by Simple Proof Reading  
Be sure to have someone you trust look over the documents for any mistakes before you sign them
  - *For example, in the Affidavit of Plaintiff or Defendant, the box is checked that reads: "I am not seeking maintenance as payee as described in the Notice of Guideline Maintenance (the "Notice") (or that I am not seeking equitable distribution) other than what was already agreed to in a written agreement/stipulation."*
  - *The words "other than what was already agreed to in a written agreement/stipulation" must have been crossed out in the Affidavit if there was no such agreement.*
  - *Otherwise, the Court will reject the papers because the Court will think the agreement exists and was not submitted.*
  
- 3) Documents Uploaded Incorrectly
  - *Make sure you carefully follow instructions from your County about how to upload documents.*
  
- 4) Defendant's Affidavit (Form UD-7) signed prior to filing of the summons
  - *Note: if the Defendant swears he/she has received the summons before the summons is filed, the Affidavit cannot be accepted by the court because the summons would have had to have been filed first.*

#### **5) Additional Relief Not Listed**

- *You need to put in all the relief you want in the Summons with Notice (UD-1) or in the Verified Complaint (Form UD-2) if you are using the plain Summons (Form UD-1a). (A plain summons does not contain the relief requested because it always is served with a complaint which contains the relief requested.) You must then repeat the relief you want in the Plaintiff's Affidavit (Form UD-6).*
- *For example, if you want child support, maintenance and/or equitable distribution, you need to say this in either the Summons with Notice (or the Verified Complaint) and repeat it in the Plaintiff's Affidavit.*

#### **6) Prior Court Orders: Missing**

- *For example, there is a prior Family Court Order of support or custody and visitation. You must include a legible (clear) full copy with your papers. If the child referred to in the Family Court Order is now over 18, the Supreme Court cannot continue the Family Court Custody order.*

#### **7) Separation Agreement or Stipulation of Settlement:**

(a) missing;

(b) no proof of filing and filing fee payment with the county clerk;

(c) not properly notarized with a special form of notary called an "acknowledgement in the form of a deed."

- *This is different from the form of notary that simply says "sworn to before me."*
- *See <https://dos.ny.gov/system/files/documents/2021/08/aocform.txt> for a copy of the special form*

#### **8) Affidavit of Service is Missing**

- *An Affidavit of Service (UD-3) is proof that the Defendant was served with the summons.*
- *In the Affidavit of Service, the server swears or affirms before a Notary Public that the Defendant was personally served.*
- *The Defendant can waive (not require this) in writing.*
- *The server must be someone other than you over the age of 18 (Remember you cannot serve the documents yourself)*

- 9) **Affidavit of Service Does Not Contain (Have) Required Information**
- *(Incomplete description of person served (i.e., age, height, weight) or photo (picture) missing even though affidavit recites photo was used to identify – or photo submitted without a statement that the photo fairly and adequately represented defendant’s appearance).*
  - *Affidavit of Service shows that service was made on Sunday*
  - *(Sabbath observers cannot be served on the Sabbath)*
  - *Questions regarding Defendant’s military service on Affidavit of Service not filled out*
- 10) **Proof of Service of Required Notices Missing**
- *The Plaintiff must have had served on the Defendant the notices in the first three forms in the Uniform NYS Uncontested Divorce Packet of Forms. These three forms are:*
    - *Maintenance Guidelines Notice*
    - *Notice of Automatic Orders*
    - *Notice Concerning Continuation of Health Care Coverage.*
  - *NOTE: You can find them posted on the web at:*  
[Uncontested Divorce Forms | NYCOURTS.GOV.](http://www.nycourts.gov/uncontested-divorce-forms)
- 11) **Missing Summons**
- *The Summons is how your case starts. Without it your case must be rejected.*
  - *You must use a Summons that is only used for a divorce action – It says on it “Action for Divorce.”*
- 12) **Required Documents or Information Missing**
- *For example: Affidavit(s), Worksheets, Certificate of Dissolution, UCS-111 or NYS Case Registry Form Missing or Incompletely Filled out*
  - *Where information is requested, such as health insurance information for the children (e.g., which party is responsible for payment and names of insurers, identification and types of coverage), you cannot leave blank boxes or lines – you must fill them in.*
  - *UD-8(1) is required if one of the parties seeks maintenance or child support; UD-8(2) is required if one of the parties seeks maintenance; UD-8(3) with Appendix G filled out is required if there are children of the marriage under 21, and you must fill out the low income exemption portion of Appendix G.*
  - *If there is a written agreement or stipulation of the parties as to*

*child support, it will be up to the court to approve it, and you must give the court enough information about the parties' income to do so.*

- *On the Summons, you must give the basis of venue (where the action is brought), and if the basis of venue is the residence of the Plaintiff, you must give the Plaintiff's address unless you have obtained an order of confidentiality from the court.*

**13) Required Language Missing from Affidavits, Findings of Fact and Conclusions of Law or Judgment of Divorce**

*(For example, an agreement or stipulation between the parties as to child support must state all of the following:*

- *The parties have reviewed the Child Support Standards Act for calculating child support.*
- *The amount of child support required to be paid would be \$\_\_\_\_\_ per year. This amount should be the correct amount unless we agree to "Deviate "from (not follow) the amount in the Act.*
- *If we agree to deviate from this amount, our reasons are stated below:*

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- *Every document in your papers must state the same things*

**14) Parties try to "waive" (not have) requirements of the child support standards act rather than "deviate" (not follow it)**

- *There must be a payment of at least \$25.00 per month unless the court decides it would be unjust and inappropriate based on certain factors required by the statute*
- *You cannot agree not to pay any child support.*
- *You have to tell the court why you are asking for this, and the court will decide if they are willing to approve the child support amount you are asking for*

**15) Social Security Numbers Missing or Redacted (Crossed Out)**

- *This is especially important in Cases with Children for Child Support Enforcement but is required in all cases*

**16) Form of papers not proper form**

- *Do not use two-sided copies.*
- *Papers must be on white paper in black ink as required by law*

**17) Corrections on previously sworn affidavits**

- *(Affidavit must be redone and sworn to and notarized again)*
- *You cannot just fix or change a form once it was notarized – it needs to be notarized again.*

**18) Notarization (a) Signatures not notarized.**

**(b) Notary's Commission expired.**

*Check the stamp the Notary put on the document to make sure the date of their Commission ending has not passed when they signed it.*

**(c) Not signed in front of Notary**

**(d) Improper Foreign Notarization**

- *If a document is notarized outside the United States, it is best to speak to an attorney to make sure it is in proper form*

**19) Improper Foreign Service**

- *If it is necessary to serve the Defendant outside the United States, it is best to speak to an attorney*
- *Foreign service can be complicated.*
- *It is not enough to simply pay for airfare for service abroad*

**20) Improper Submission of Papers**

- *The papers must contain email or fax numbers so that the court can contact you.*
- *For both e-filed and hard copy filings, divorce papers must be submitted to the County Clerk for payment of the fees prior to submission of the Summons with Notice (Form UD-1) or the Summons (UD-1a) and Verified Complaint (Form UD-2)*
- *The Note of Issue (Form UD-9) and RJI (Form UD-13) with RJI Addendum (if there are children) must be uploaded separately on NYSCEF (if you are e-filing)*



**Office of the Statewide Coordinating Judge for Matrimonial Cases**