



**FOURTH:**

I waive the service of all further papers in this action except for copies of the signed Judgment of Divorce and any other signed orders with Notice of Entry.

**OR**

I request service of the *Proposed Judgment of Divorce and any other proposed orders as well as the signed Judgment of Divorce and any other signed orders with Notice of Entry.*

**FIFTH:**

I am not seeking equitable distribution. I understand that I am waiving my right to equitable distribution.

**OR**

Equitable distribution has been agreed to in the parties written agreement dated: \_\_\_\_\_.

**OR**

I consent to the equitable distribution as requested by the plaintiff.

**SIXTH:** I  *am self supporting and I am not seeking Maintenance*  
 *am receiving Public Assistance*

**SEVENTH:**

A)  *I will take or have taken all steps solely within my power to remove any barriers to the Plaintiff's remarriage.*

**OR**

B)  *I waive the Plaintiff's requirement to file the affidavit pursuant to DRL§ 253Removal of Barriers to Remarriage.*

**OR**

C)  *I admit service of the sworn statement of the Removal of Barriers to Remarriage.*

**OR**

D)  *The parties were married in a civil ceremony.*

Subscribed and Sworn to before me on

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
(Print Name)

## INSTRUCTIONS

### Affidavit of Defendant – Form A-5

If you have been served with a Summons With Notice or a Verified Complaint-Action for Divorce, your spouse has started a divorce case.

Ask yourself these two questions: *Do I oppose the divorce itself? Do I oppose anything else my spouse is asking for in the divorce papers?*

You may want to discuss your situation with a lawyer before deciding on your final answers to these questions. If you answered “Yes” to *either* of the two questions, do *not* fill out this form at this time. If you are opposing the divorce or anything else your spouse is asking for, your next step should be to talk with a lawyer. The Supreme Court Clerk’s Office in the county where you live (if you live in New York State) can help you with information about lawyer referral services, but cannot give you legal advice.

*Either talk with a lawyer or the Supreme Court Clerk’s Office immediately, since there are time limits for the next steps in the case.*

If you have decided to agree to the divorce and to the other things your spouse is asking for, or if you and your spouse have worked out a written Settlement Agreement about everything involved in the divorce, you can fill out the Affidavit of Defendant form and send it back to your spouse. You have **40 days** to do this from the date you receive the form.

Following are instructions for filling out the Affidavit of Defendant:

Use black ink only. Do *not* use “white out” if you make a mistake. Neatly draw a line through your answer and rewrite it.

#### **On Page 1 of the form:**

- Under the words “Supreme Court of the State of New York, write the name of the county where your spouse started the divorce case.
- Write your spouse’s name next to the word “Plaintiff” and write your name next to the word “Defendant.” *Write the names the same way your spouse wrote them on the Summons With Notice or Verified Complaint-Action for Divorce.*
- In the upper right-hand corner, after the words “Index No.,” write the index number as it appears on the form that you received.
- You will have to get this form signed by a Notary Public after you fill it out. Next to the words “State Of” and “County Of,” write the name of the state and county where you will be having the form notarized.
- On the line above the word “Defendant,” write your name *the same way you wrote it above*.
- On the line after the words “I reside at,” write your address and after the words “My social security number is,” write your social security number.

**Do not write your address or social security number on this form or on any other form if you want them to be confidential!**

If you are worried about domestic violence -- or have any other reason for wanting your address or social security number to be kept confidential-- you will need a Confidentiality Order. If you want this order, leave the information blank for now. Complete the rest of the form, then immediately go to the Supreme Court Clerk's Office where you spouse filed the divorce to talk about a Confidentiality Order. (Do not get this form notarized yet.)

- If you are the wife, check the box with the blank line after the words "My prior surname (last name) was" and write your prior name on the line.

**Next to the word "FIRST:"**

- Fill in this section if you want to admit to the Court that you have been served with the divorce papers.

**Under the word "THIRD:"**

- If you are not in the military service, check that box.
- If you are in the military service, checking this box will *waive all rights you may have under the New York State Soldiers and Sailors Civil Relief Act* and will allow the court to put the case on its uncontested divorce calendar for approval. If you are not sure whether you want to check this box, talk with a lawyer.

**On Page 2 of the form under the word "FOURTH:"**

- Check the box next to the words "I waive service of all further papers in this action..." if you do not want to see any other court papers in the case until *after* the divorce is final.
- Check the box next to the words "I request service of the Proposed Judgment of Divorce..." if you want to see a copy of what the Judgment of Divorce will look like *before* the court approves it.

**On page 2 of the form under the word "FIFTH:"**

- Check the box next to the words "I am not seeking equitable distribution..." if you do not want any of the property from the marriage. *You have the right to ask for marital property and you will be waiving that right by checking this box.*
- Check the box next to the words "Equitable distribution has been agreed to..." if you and your spouse have signed a written agreement dividing the marital property. Write the date on the line where shown.
- Check the box next to the words "I consent to the equitable distribution as requested by the plaintiff" if your spouse has asked for property from the marriage in the divorce papers and you want to agree to what your spouse has asked for.

**On Page 2 next to the word “SIXTH:”**

- Check the first box if you are not receiving public assistance and are not asking for maintenance payments (“alimony”) from your spouse after the divorce. If you are not receiving public assistance and you *do* want maintenance payments, cross out the word “not” in the line after the first box and check that box.
- Check the second box if you are receiving public assistance.

**On Page 2 under the word “SEVENTH:”**

- Check Box “A)” if you have done or intend to do everything that your religion requires you to do to remove barriers to your spouse’s remarriage.
- Check Box “B)” if you want to waive your right to have your spouse file a “Sworn Statement of Removal of Barriers to Remarriage.”
- Check Box “C)” if you have received a Sworn Statement of Removal of Barriers to Remarriage from your spouse and want to admit that you have received it.
- Check Box “D)” if you and your spouse were not married in a religious ceremony.

Take the form to a Notary Public, where you will sign your name in the presence of the Notary. If you are signing this affidavit in a foreign country, have it notarized at the U.S. Consulate’s Office.

Make a copy of the form for your records. Mail the original to your spouse or, if an “agent for service” is named in the papers that you received, to the address of the agent for service. (Do *not* attempt to mail it to your spouse if an agent for service is shown.) Use *certified mail* and request a return receipt for your records.