

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 20-99 and 20-106 of the Code of Virginia, relating to no-fault*  
3 *divorces; corroboration requirement.*

4 [H 1911]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 20-99 and 20-106 of the Code of Virginia are amended and reenacted as follows:**8 **§ 20-99. How such suits instituted and conducted; costs.**9 Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in  
10 this section:11 1. ~~No~~ *Except for a divorce granted on the grounds set forth in subdivision A (9) of § 20-91, no*  
12 *divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the*  
13 *parties or either of them.*14 2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of  
15 either party in the pleadings or otherwise.16 3. Process or notice in such proceedings shall be served in the Commonwealth by any of the  
17 methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service  
18 may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized  
19 to serve process under § 8.01-320.20 4. In cases where such suits have been commenced and an appearance has been made on behalf of  
21 the defendant by counsel, then notices to take depositions and of hearings, motions, and other  
22 proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for  
23 opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel  
24 in compliance with the Rules of Supreme Court of Virginia. "Counsel for opposing party" shall include  
25 a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing  
26 an order of withdrawal of that party's counsel or (ii) has signed a pleading in the case or who has  
27 notified the other parties and the clerk that he appears in the case.28 5. In cases where such suits have been commenced, the defendant has been served pursuant to the  
29 provisions of subdivision 1 of § 8.01-296, and the defendant has failed to file an answer to the suit or  
30 otherwise appear within the time allowed by law, no further notice to take depositions or conduct an ore  
31 tenus hearing is required to be served on the defendant and the court may enter any order or final  
32 decree without further notice to the defendant.

33 6. Costs may be awarded to either party as equity and justice may require.

34 **§ 20-106. Testimony may be required to be given orally; evidence by affidavit.**35 A. In any suit for divorce, the trial court may require the whole or any part of the testimony to be  
36 given orally in open court, and if either party desires it, such testimony and the rulings of the court on  
37 the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence  
38 was given before him and such rulings made. When so certified the same shall stand on the same  
39 footing as a deposition regularly taken in the cause, provided, however, that no such oral evidence shall  
40 be given or heard unless and until after such notice to the adverse party as is required by law to be  
41 given of the taking of depositions, or when there has been no service of process within the  
42 Commonwealth upon, or appearance by the defendant against whom such testimony is sought to be  
43 introduced. However, a party may proceed to take evidence in support of a divorce by deposition or  
44 affidavit without leave of court only in support of a divorce on the grounds set forth in subdivision A  
45 (9) of § 20-91, where (i) the parties have resolved all issues by a written settlement agreement, (ii) there  
46 are no issues other than the grounds of the divorce itself to be adjudicated, or (iii) the adverse party has  
47 been personally served with the complaint and has failed to file a responsive pleading or to make an  
48 appearance as required by law.49 B. The affidavit of a party submitted as evidence shall be based on the personal knowledge of the  
50 affiant, contain only facts that would be admissible in court, give factual support to the grounds for  
51 divorce stated in the complaint or counterclaim, and establish that the affiant is competent to testify to  
52 the contents of the affidavit. If either party is incarcerated, neither party shall submit evidence by  
53 affidavit without leave of court or the consent in writing of the guardian ad litem for the incarcerated  
54 party, or of the incarcerated party if a guardian ad litem is not required pursuant to § 8.01-9. The  
55 affidavit shall:

56 1. Give factual support to the grounds for divorce stated in the complaint or counterclaim, including

57 that the parties are over the age of 18 and not suffering from any condition that renders either party  
58 legally incompetent;

59 2. Verify whether either party is incarcerated;

60 3. Verify the military status of the opposing party and advise whether the opposing party has filed an  
61 answer or a waiver of his rights under the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et  
62 seq.);

63 4. Affirm that at least one party to the suit was at the time of the filing of the suit, and had been for  
64 a period in excess of six months immediately preceding the filing of the suit, a bona fide resident and  
65 domiciliary of the Commonwealth;

66 5. Affirm that the parties have lived separate and apart, continuously, without interruption and  
67 without cohabitation, and with the intent to remain separate and apart permanently, for the statutory  
68 period required by subdivision A (9) of § 20-91;

69 6. Affirm the affiant's desire to be awarded a divorce pursuant to subdivision A (9) of § 20-91; *and*

70 7. State whether there were children born or adopted of the marriage and affirm that neither party is  
71 known to be pregnant from the marriage; *and*

72 8. Be accompanied by the affidavit of at least one corroborating witness, which shall:

73 a. Verify that the affiant is over the age of 18 and not suffering from any condition that renders him  
74 legally incompetent;

75 b. Verify whether either party is incarcerated;

76 c. Give factual support to the grounds for divorce stated in the complaint or counterclaim;

77 d. Verify that at least one of the parties to the suit was at the time of the filing of the suit, and had  
78 been for a period in excess of six months immediately preceding the filing of the suit, a bona fide  
79 resident and domiciliary of the Commonwealth;

80 e. Verify whether there were children born or adopted of the marriage and verify that neither party is  
81 known to be pregnant from the marriage; *and*

82 f. Verify the affiant's personal knowledge that the parties have not cohabitated since the date of  
83 separation alleged in the complaint or counterclaim and that it has been either party's intention since that  
84 date to remain separate and apart permanently.

85 C. If a party moves for a divorce pursuant to § 20-121.02, ~~any~~ *an* affidavit may be submitted in  
86 support of the grounds for divorce set forth in subdivision A (9) of § 20-91.

87 D. A verified complaint shall not be deemed an affidavit for purposes of this section.

88 E. Either party may submit the ~~depositions~~ *deposition* or ~~affidavits~~ *affidavit* required by this section  
89 in support of the grounds for divorce requested by either party pursuant to the terms of this section.

90 F. In contemplation of or in a suit for a no-fault divorce under subdivision A (9) of § 20-91, the  
91 plaintiff or his attorney may take and file, as applicable, the complaint, the ~~affidavits~~ *affidavit* or  
92 ~~depositions~~ *deposition*, any other associated documents, and the proposed decree contemporaneously, and  
93 a divorce may be granted solely on those documents where the defendant has waived service and, where  
94 applicable, notice.