

October 26, 2020

Accessing Justice During Covid-19

TRANSCRIPT

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Welcome to Accessing Justice During Covid-19, the New York State Unified Court System's Office for Justice Initiatives program, in celebration of National Pro Bono week. Covid-19 has impacted our communities in ways we never could have imagined. The past seven months have proven to be a test of our endurance and sheer determination to make it through this pandemic. Perhaps you were involved in a court case before the pandemic was declared or maybe a loved one has passed away and you have been tasked with managing their legal affairs, or maybe this once in a lifetime experience has made you re-think your decision to be married and you are seeking a divorce. Whatever the reason may be, we hope that by the end of this program you will have the information and resources you need to help make this difficult time a little bit easier.

It is important to note, that the information provided is current as of the date of recording and is not legal advice. If you need or want legal advice, it is always best to speak with a licensed attorney and get advice specific to your facts and circumstances.

We begin this program with an introduction to the Office for Justice Initiatives and NYS Courts Access to Justice Program. We will then introduce you to court based Help Centers and provide you with a roadmap for today's program.

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The Office for Justice Initiatives, also known as OJI, directs the New York State Courts Access to Justice Program, oversees child welfare and juvenile and adolescent justice initiatives, including the implementation of legislation raising the age of criminal responsibility in New York, and also works closely with the Permanent Commission on Access to Justice, the Advisory Committee on Access for People with Disabilities, the Center for Court Innovation, the Division of Technology, the Grants Office, the Office of Language Access, Office of Legal Information and law schools.

The mission of the Access to Justice Program is to ensure access to justice for New Yorkers of all backgrounds, incomes, and special needs, by using every resource, including pro bono programs, self-help services, and technological tools, and by securing stable and adequate non-profit and government funding for civil and criminal legal services programs.

For the past decade, the NYS Courts Access to Justice program has supported and promoted National Pro Bono Week events hosted by individual Help Centers throughout New York State. In the past, Help Centers have hosted presentations, workshops and have held open houses for the general public. The events provided the opportunity for people to visit courthouses and public access law libraries. This year, because of the Covid-19 public health crisis, we are continuing the tradition in a new way.

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Each year, thousands of people without attorneys, visit court-based Help Centers all over New York State to get information about the law and court procedure. If you have ever received papers telling you to report to court, or if you've had to go to court to

start a case, you know there are many things you need to quickly learn. Legal terms can be confusing, Help Centers make the process a little easier. Staffed by court employees, Help Centers are available to anyone without an attorney. Although Help Centers do not provide legal advice, if, after receiving information, you would like to speak with an attorney to get advice specific to your case, a Help Center can give you referrals for attorneys and organizations that may be able to help you. Covid-19 has changed how Help Centers provide their services. While some Help Centers are providing in person assistance, many help centers are providing remote services, speaking with folks by telephone, and responding to emails. Visit www.nycourthelp.gov and click on Help Centers located in the Quick Links box to learn the best way to contact the available Help Centers.

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This webinar includes information for five main topics. First, we will begin with the topic of Small Estates, we will then move onto the topic of Administration proceedings, followed by Name Changes, Divorce and free online resources that the court offers. As we move through each section, you will hear the voices of several OJI staff members. We will then wrap up the program by going through some of the frequently asked questions that court users, such as yourself, have reached out to Help Centers with, during the covid-19 health crisis. Last, we will provide you with important contact information. While we can never fully replace the experience of in person National Pro Bono Week events, we hope you find this program both enjoyable and informative.

The first two topics bring us to Surrogate's Court. The Surrogate's court hears cases involving the affairs of decedents. A decedent is a person who has passed away. We will begin with small estates, which are also called voluntary administrations; and move on to administrative proceedings.

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A small estate affidavit, is a court proceeding that is a useful and sometimes necessary tool when a person passes away and their property needs to be identified, accessed or when a task involving the person's property needs to be completed and authorization is necessary. Examples of such tasks include closing a post office box with the U.S. postal service; getting medical records from a hospital; managing a storage unit and more. It does not matter if the person had a will or not.

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In order to qualify as a small estate, the value of the estate must be \$50,000 or less. A small estate affidavit can be filed whether or not there is a last will and testament.

The small estate proceeding is complete when the Surrogate's Court appoints a voluntary administrator and issues certificates of voluntary administration.

When the Surrogate's court issues certificates of administration, they are issued for each asset listed in the papers for the voluntary administrator to collect and distribute the way the law says they should be distributed.

A small estate is used to collect an asset, if the value is known. Examples include: to collect property invoiced by the NYPD, money held in a bank account, or to collect the contents of a safety deposit box at a bank. Assets that can be collected do

not include assets with living beneficiaries or assets that are owned by the deceased and someone else together.

A small estate can also be used to get information if the value of an asset is unknown. For example: to get information from a bank, to get information from the NYS Comptroller's Office for Unclaimed Funds, or to obtain information from a NYC Employee's Retirement System. If the information found, shows that the value of the estate is more than \$50,000 and the deceased person had a will, then a petition for probate must be filed. If the information found, shows that the value of the estate is more than \$50,000 and the deceased person did not have a will, then a proceeding called an administration should be started. We will cover administration proceedings in the next part of the program.

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Advantages of a small estate include that there is no waiting period to file. This means that a small estate can be filed as soon as a death certificate has been issued. Also, a person's credit status has no effect, and there is a relatively quick turnaround time. For NYC applicants the turnaround is between 1-2 business days; for out of state applicants it is the same day.

Sometimes a small estate is possible even if the deceased lived outside of NYS. In this case, the court looks at whether there are other proceedings anywhere else and whether there is any property in the county where the small estate proceeding has been filed. Citizenship status does not matter for a small estate proceeding.

There are also some disadvantages to a small estate proceeding including – it only applies to personal property. Personal property includes things like cars, jewelry, pets and financial accounts whereas real property includes things like houses, buildings and lots of land. Also, if there is a possibility that a future lawsuit will be filed, for example a wrongful death claim, depending on whether the deceased had a will, either a probate or administration proceeding should be filed.

Now that you know what a small estate proceeding is as well as some of the advantages and disadvantages to filing a small estate proceeding, you may be wondering who can file for one. The first step to identifying who may file a small estate, is figuring out if the deceased person had a will.

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If there is a will, the courts will look at the will and priority for filing a small estate affidavit is given to the person named as the executor in the will, if the executor has died or is not available to file, the second is the person named as successor executor in the will, if there is no executor available, the third is the sole beneficiary named in the will. A beneficiary is a person who can share in an estate. If there is more than one beneficiary then any beneficiary named in the will, and last is someone who qualifies as a distributee. A distributee is a family member who is entitled to a share of the decedent's estate when there is no will.

The courts will look at the distributees, and give priority in the following order: first to the spouse, if there is no spouse, then any living children, and/or grandchildren, if no one in the prior category is alive or available, then to the deceased's parents, then to the deceased person's siblings and nieces/nephews and finally to aunts and uncles. If

there are no family members in the categories mentioned, contact the Surrogate's Court for more information.

The same rules apply whether there is a will or not. If there is someone who has priority over the person who has filed for the small estate, (for example, a child files but the spouse is alive) the person who has filed needs to explain why the person with priority is not filing. This explanation is done either by renunciation, which is a fancy way of saying the person with priority does not wish to file or by proving that the person who has priority has died and cannot file. If someone has an equal right to file the small estate affidavit (such as a decedent's children), that person must sign a waiver. Anyone who is given equal or less priority than the person who has filed for the small estate gets a notice from the court.

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Once you have determined that you are eligible to file a small estate proceeding, it is time to get the information and items needed to file. You will need an original death certificate of the deceased. The funeral director typically receives the first death certificates. You may want to ask for extra copies if you plan to file an administration proceeding. Death certificates may also be obtained from the office of vital statistics in the city or town where the decedent passed away.; you will also need \$1.00 for the filing fee, if there is a last will and testament you will need the original and one copy (do not remove the staples from the last will and testament when you make the copy – simply fold the page back and copy each page one by one). If there is an NYPD property voucher you will need it, along with the small estate affidavit.

Depending on the facts of your case, other information and documents might be needed. For example, if you are the only distributee, an aunt or uncle of the deceased, or a child of a deceased who was never married, you will need a family tree chart; renunciation or proof of death; proof that anyone with priority to file over you has died and cannot file; an affidavit proving that you have performed a thorough search for people who may have priority to file ahead of you and you do not know who they are or where they are – this is called an affidavit of due diligence for unknowns, a safe deposit box inventory if a safe deposit box search was previously performed, and any other affidavits that the court might tell you are needed.

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The small estate affidavit is filed in the Surrogate's Court in the county where the deceased lived and considered their primary home address before they passed away. If the person had more than once residence, the primary home is the place where the deceased intended to return. It is important to note that a nursing home is not considered a domicile. Think of a domicile as a home base, the place where a person will always return to. A person only has one true domicile or home base whereas they may have multiple residences or places they live at for part of the year. If the deceased lived in a nursing home before they died, the small estate proceeding is filed in the county where they lived before entering the nursing home even if they no longer own or rent a home there.

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The easiest way to prepare the papers needed to file for a small estate proceeding is to use the free small estate DIY Form Program provided by the court. This

step by step program will ask you a series of questions, then using the information you provide, will create papers for you to file in court. Along with the papers, you will receive step by step instructions and contact information for the surrogate's court in the county where you will file. Try to gather as much information as you can about the decedent's assets to answer the questions.

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Once the paperwork is received and reviewed by the court, the person who filed the small estate becomes the voluntary administrator and certificates of voluntary administration are issued for each task or item listed in the petition. The voluntary administrator must present the right certificate to the correct entity such as the NYS Comptroller's Office for Unclaimed Funds. The voluntary administrator may have to file an amendment if the value of an asset that was previously unknown is determined or if a new asset is discovered or if the value of an asset needs to be corrected, always keeping in mind that the total value of the estate cannot go over \$50,000.

A voluntary administrator's responsibilities may include: opening an estate account to deposit money belonging to the estate (including checks made out to the deceased, and money from the sale of personal property that was not passed on to another in a will); paying all debts owed by the estate (including administrations fees, funeral fees, and all other creditor fees); and distributing the balance to the distributees.

Responsibilities include filing a statement of the assets with the court which lets the court know that the estate can be closed and remaining accountable for the administration.

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Small estate proceedings have been impacted by the covid-19 public health crisis.

Issues that have come up include: identifying the cause of death; the deceased being in the care of the office of the chief medical examiner; difficulty with filing paperwork due to travel restrictions; petitions filed for multiple family members; difficulty accessing apartments, and more.

Covid-19 has created many challenges however the surrogate's courts have continued operating. In New York County, virtual services have been developed including a Help Center dedicated phone line and email communication; language line interpreter services are being used and papers are previewed before submitted. Virtual notarization is accepted. Collaboration with NYPD Property Clerk Offices has improved. E-filing – NYSCEF allows for payments to be made online. There are alternative dispute resolution options available.

When filing the paperwork for a small estate it is important to review the instructions carefully, gather all information available to you and understand that the paperwork may be slightly different depending on the county where you are filing.

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If you need help with a surrogate's court case in New York City, you can reach out to the NY City Bar Association's Planning and Estates Law Project (PELP Program) at (212) 382-6756. You may also reach out to the NY County Surrogate's Court directly to obtain a referral to the City University School of Law's Disability and Aging Justice Clinic by calling (347) 978-4068 or emailing egomez@nycourts.gov

The New York State Bar Association's Pro Bono Initiative provides free help with completing estate forms for Covid-19 related cases. You may visit

<https://nysba.org/surrogatescourt/> for more information.

We are going to continue in the next segment with a different type of proceeding filed in Surrogate's Court called an administration proceeding. Remember, if the information found, shows that the value of the deceased person's estate is more than \$50,000 and the deceased person did not have a will, then a proceeding called an administration should be started.

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A common scenario that leads to an administration proceeding involves an adult child filing papers with Surrogate's Court once both of their parents have passed away and there is real property. The children must file papers with the Surrogate's Court to have a fiduciary appointed. A fiduciary is a person who must use a high standard of care when handling another person's money or property.

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In Surrogate's Court, a deceased person is called a decedent. If the decedent did not have a will, an administrative proceeding can be filed in Surrogate's Court to collect and distribute the assets if the value is greater than \$50,000 and/or if the assets include real property such as a house, vacant land or buildings.

A person who qualifies as an eligible distributee will file a petition for administration in the Surrogate's Court of the county where the decedent lived at the time of death. A distributee is a family member who is entitled to a share of the decedent's estate when there is no will. In an administration proceeding, the Court appoints the administrator and grants something called "letters of administration" which gives the administrator the authority to collect assets, pay debts, and distribute the estate property to the decedent's distributees.

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It is important to identify the administrator of an estate. In general, the closest eligible distributee will file a petition for administration. The Surrogate's Court Procedure Act § 1001, is the law that lists the people who are eligible to receive letters of administration based upon their relationship to the deceased, in order of priority, which courts must follow. This includes the:

- Surviving spouse
- Children
- Grandchildren
- Mother or father
- Brothers or sisters
- Any other distributee, with preference given to the distributee entitled to the largest share of the estate.

There are some unique circumstances that you should be aware of when determining who is considered an eligible distributee with priority to serve as the administrator.

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Non-Marital Children

A non-marital child is a child whose parents were not married.

A non-marital child is entitled to receive letters of administration in their mother's estate.

A non-marital child is entitled to receive letters of administration in their father's estate if the requirements of the Estates Powers and Trusts Law are met. This generally requires the non-marital child to either file (1) an order of filiation/acknowledgment of paternity under the Public Health Law; or (2) an acknowledgment of paternity that was filed with the Putative Father's Registry.

An order of filiation is an order granted by a Judge that determines and establishes a parental relationship. An acknowledgment of paternity is a formal document accepting the role and responsibilities of a parent.

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Certain individuals are not eligible – or not permitted – to be appointed as an administrator of an estate. Some of those who are ineligible are:

- Infants

If the decedent was not married, and had minor children at the time of death, the minor children are the decedent's distributees. Children under the age of 18, are not eligible to petition for or to serve as the administrator of the estate. The general rule is that the property guardian of a minor child is eligible to serve as the administrator.

- individuals who are "incompetent" [insert definition for incompetent]
- felons
- non-domiciliary aliens. A non-domiciliary alien is a person who is not a U.S. citizen who resides outside the State of New York. A non-domiciliary alien can serve as co-administrator with another person who is a NY resident.

Now that you know what an administrative proceeding is used for, as well as who can and cannot file a petition for administration, let's move on to what you will need to file the petition for administration.

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Before an administration proceeding is filed, documents and information need to be gathered. First is the deceased person's death certificate – this must be filed with the petition. The funeral director typically receives the first death certificates, so you may want to ask for an extra copy if you plan to file an administration proceeding. You may also request a copy of a death certificate from the office of vital statistics in the city or town where the deceased person passed away. You can always reach out to the Surrogate's Court if you have questions.

The court may ask for a copy of the paid funeral bill. If you know the debts of the deceased, you should list them. Debts include things like credit card bills, car payments, utility bills and medical bills. Unpaid funeral expenses are one of the debts of the estate.

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There is a filing fee based on the value of the estate, that must be paid at the time the petition is filed with the Court.

Value of Estate or Subject Matter Fee	Fee Rate
Less than \$ 10,000	\$ 45.00
10,000 but under 20,000	75.00
20,000 but under 50,000	215.00
50,000 but under 100,000	280.00
100,000 but under 250,000	420.00
250,000 but under 500,000	625.00
500,000 and over	1,250.00

Most courts do not accept personal checks. Be prepared to pay the filing fee with a money order, certified bank check, or credit card. In order to determine the filing fee, you should have a basic idea of what the decedent owned and the value of the property. After you have the information, documents and filing fee to file the administration the next step is completing the petition for administration.

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The form for the petition for administration is available on the NYS Courts website at: ww2.nycourts.gov/forms/surrogates/administration.shtml. Although the petition is long, all parts of the petition must be completed. If you use the online PDF form, type the information into the forms on the computer and print them out. At the very top of the petition, the county where the petition is being filed must be filled in. In the caption – the upper-left hand section of the first page – the decedent’s name should be filled in exactly the same way it appears on the death certificate. You must also be sure to check the type of letters you are applying for – in this case, letters of administration. The next few slides will walk you through filling out the petition.

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Paragraph 1:

This section asks for information about the person filing the petition, known as the petitioner. This is the person asking to be appointed administrator. It is very important that all of the information is filled in and boxes checked, especially the questions asking about citizenship and whether the petitioner is a felon.

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Paragraph 2 asks for information about the decedent, also known as the deceased. You should be able to find this information on the death certificate.

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Paragraph 3 asks for information about the assets of the estate. Estate assets are those in the decedent’s name alone – do not include joint assets (assets owned by the

deceased person and another person together) or assets that say who the beneficiary is such as insurance policies. Remember, the value of the estate will ultimately determine your filing fee.

Paragraphs 4 and 5 do not require you to fill in any information.

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Paragraph 6 asks for the number of distributees that survived the decedent. Starting with “spouse,” write “no” in the box if there is no surviving distributee in that category. Indicate the number of surviving distributees in a category, then write “X” in all subsequent categories.

For example, if the decedent had a spouse and two children, the number 1 would be in the “spouse” category and 2 in the “children” category. Typically, all the following classes would be marked with an “X”.

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Paragraph 7(a) asks for the names and addresses for all distributees over the age of 18, who are competent meaning they have the mental ability to understand problems and make decisions, and not be under a disability or incarcerated.

If any of the distributees are under the age of 18, incompetent or under a disability, they must be included in paragraph 7(b).

The number of distributees listed in paragraph 6 should match the number of distributees identified in paragraph 7.

Depending on who the decedent's distributees are, there might be more documents needed by the Court. Some of the other documents that might be required include: A Renunciation of Letters of Administration and Waiver of Process – also referred to as a “waiver” – This may be filed by any competent adult who has a prior or equal right to letters of administration. For example, if a decedent was survived by 4 children and one of the children is petitioning to be administrator, the other three children have an equal right to petition. By filing a waiver, the children are agreeing to the appointment of their sibling as administrator. If a waiver is not signed, a citation will be needed. In Surrogate's Court, a citation is the process by the court to get jurisdiction over someone and give them notice of the proceeding.

If there is only one distributee surviving – known as a sole distributee – a sole distributee affidavit is required. Some courts have a form Sole Distributee Affidavit on their court's website.

A notice of application for letters of administration must be given to all those listed in paragraph 7(a) who do not have a priority right to letters. A good example is where a decedent is survived by a spouse and 3 children. All are distributees, but the spouse has the priority right to be appointed as administrator. The notice must be given to the children and an original affidavit of service and notice must be filed with the Court.

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For any non-marital or adopted out individuals or individuals listed in paragraph 7(b), the appropriate schedule (Schedule A, B, C or D) must be completed and filed. The schedules are included along with the petition for letters of administration on the NYS Courts website.

If any of the people listed in paragraph 7(b) are unknown, or whose whereabouts are unknown, an affidavit of due diligence must be filed showing the diligent efforts that have been made to locate unknown distributees or distributees whose whereabouts are unknown.

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Paragraph 8 asks for information related to the decedent's debts and funeral expenses. This information is important, particularly in determining whether a bond is required. A bond is an insurance policy that protects the rights of creditors and distributees of an estate. A bond can be obtained from a bond company and the cost is based on the value of the estate property. If all distributees consent, the Court may determine that a bond is not needed, but many factors trigger the bond requirement. Ultimately the decision on whether a bond is needed is made by the Court.

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Once all the information is completed, the petition must be signed, and a document called the Verification, Oath and Designation must be signed and notarized. This may be found on page 5 of the petition for letters of administration packet located on the NYS Courts website.

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Once the petition for administration and other documents are completed, signed and notarized, they must be filed with the Surrogate's Court in the county where the decedent was "domiciled" at the time of death. A person's domicile is the county their permanent and primary home is located in, even if the person is temporarily living somewhere else (like at a vacation home or a rehabilitation facility).

Because of the COVID-19 public health emergency, many courts no longer permit filings to be made in person and/or are encouraging individuals to file papers by mail or online. A petition for administration can be filed by: mailing the original documents and filing fee to the Court; or filing the documents electronically through NYSCEF - New York State Courts Electronic Filing System.

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Remember to reach out to the Surrogate's Court in the county where you are filing to find out if there are rules or preferences for how papers should be filed. If you do not have the contact information for the court, visit www.nycourthelp.gov and in the court locator box select the county where you will file the paperwork and select Surrogate's Court under court type then click on "find the court." This will provide you with the address of the court along with the telephone number and if available the website. Once the papers are filed, they will be reviewed by the Court. If everything is in order, the Court will issue letters of administration to the petitioner.

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If a distributee has not signed a waiver and/or renunciation, the distributee must be served with a notice, formally called a citation. The citation gives the Surrogate's Court jurisdiction over them. This means that the Surrogate's Court has the authority to

determine the rights of the people involved. A citation tells the distributee that someone is asking for Letters of Administration to manage the Decedent's estate. The distributee can sign a waiver and consent to the appointment of the Administrator or come to court to disagree with the appointment. There may also be a waiver of bond included.

The citation will include a court date for the people involved to appear before the Surrogate Judge. The citation must be properly and timely served, and an affidavit of service must be filed with the Court. If service is improper or incomplete, the matter will be adjourned, and a supplemental citation will be issued.

If anyone who received a citation, objects to appointing the petitioner as the administrator, the Judge will set a schedule for filing formal objections and any further proceedings that are necessary. If there are no objections, the Judge will issue a decree granting the petition. A decree is a court order that appoints the petitioner as administrator of the estate.

If at any point in the process you are unclear about how to complete the papers for court or how to best prepare yourself, or if you simply have questions about your specific case, feel free to reach out to the Surrogate's Court where you will file the papers directly. If you want to speak with an attorney, contact your local bar association or the New York State Bar Association and ask to be connected with their attorney referral program. If you are unable to pay for an attorney, ask about any volunteer attorney programs that may be available to help you. There are many wonderful volunteer attorneys available to help guide you through the process.

We are now going to move on to a topic that has generated a lot of interest, during the covid-19 health crisis ... divorce.

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Divorce, like relationships can be complicated. If you have ever thought about getting divorced or want to learn about divorce, you may have heard people refer to two different types of divorces: contested divorces and uncontested divorces.

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A contested divorce is when the married couple does not agree how they will decide issues related to ending their marriage. For example, they may not agree on how to divide up their furniture or maybe they do not agree on who their children should live with. An uncontested divorce is when the married couple agree to get a divorce, and are able to decide together how they will do things such as divide their property, pay for any debt they might have, or support and care for their children without the court's help.

It is important to speak with a licensed attorney to learn how the law applies to the specific facts of your case and to get advice you may need especially if there is property or debt that you need to resolve as well as if you have children with your spouse and need to resolve custody, visitation and child support.

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We are now going to review two basic requirements that need to be met before filing for divorce in New York State. We will then focus specifically on uncontested divorces.

In New York State, when a married couple decides they no longer want to be married, they must meet two basic requirements before filing for divorce. A residency requirement must be met to show that at least one spouse lived in NYS for a certain

period of time. A grounds requirement must also be met. The ground for divorce is the reason the person filing for divorce, wants the divorce. There are several ways to meet both requirements.

To satisfy the residency requirement:

- Either you or your spouse must have been living in New York State continuously for two years before filing divorce papers.
- Either you or your spouse must have been living in New York State continuously for one year before filing divorce papers and you were married in New York State or you lived in New York State as a married couple or the reason for the divorce (grounds) happened in New York State.
- Both you and your spouse are residents of New York State on the day the divorce is started and the reasons for the divorce (grounds) happened in New York State.

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Grounds / Reason for the Divorce

New York State law allows people to get divorced for any of the following reasons:

- Cruel and inhuman treatment
- Abandonment
- Imprisonment
- Adultery
- Divorce after a legal separation
- Divorce after a judgment of separation
- Irretrievable breakdown

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To file for divorce based on cruel and inhuman treatment, you must be prepared to prove to the court that specific acts of cruelty happened within the last five years. The acts of cruelty must rise to the level that the Plaintiff is physically or mentally in danger and it is unsafe or improper for the Plaintiff to continue living with the Defendant.

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To file for divorce based on abandonment, your spouse must have abandoned you, the Plaintiff, for at least one year or more. One example of abandonment is if your spouse physically leaves the home with no intention of returning. Another example is when one spouse refuses to have sex with the other spouse. A refusal of sex is called constructive abandonment.

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To file divorce based on imprisonment, your spouse must have imprisoned after you were married, and remained in prison for three years or more in a row. This ground can be used once your spouse has been in prison for three years or up to five years after your spouse was released from prison.

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To file for divorce based on adultery, you must prove that your spouse cheated on you during the marriage. This ground may be hard to prove because someone other than you and your spouse is needed to provide evidence to the court.

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To file for divorce after a legal separation, you and your spouse must first sign and file a valid separation agreement with the court and live apart from one another for one year,

meaning twelve consecutive months. There are specific requirements that the separation agreement must have in order to be valid.

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Filing for divorce after a judgment of separation is not used a lot. In order to use this ground, the Supreme Court would first issue a judgment of separation and then you and your spouse would live apart for one year.

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Irretrievable breakdown, also known as no-fault divorce, is a popular ground for divorce in New York State. To file for divorce based on this ground, the marriage must be over for at least six months, meaning it can't be saved, and you must agree on how all economic issues such as how property and debt will be resolved as well as how custody, visitation and support of your children will be resolved.

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It is important to note that if you are involved in a relationship in which intimate partner violence was or is present, there are legal organizations that specialize in helping you. You may visit www.nycourthelp.gov and click on the "Find a Lawyer" link in the Quick Links box to find an organization that may help you.

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If you have minor children with your spouse and do not agree on custody, visitation and child support; or if you have property or debt that needs to be divided, it is important to speak with a licensed attorney about your specific case and get the advice that is best suited for you. You may visit www.nycourthelp.gov and click on the "Find a Lawyer" link in the Quick Links box to find an organization that may help you.

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The following information will focus on uncontested divorce cases. Specifically, cases involving couples whose marriage has been over for at least six months, do not own any property together and do not have children together.

Once you have determined that the residency requirement has been met and the grounds – that is the requirement for irretrievable breakdown has been satisfied, it is time to gather the information you will need to prepare the paperwork to file your papers in court. One of you will be the Plaintiff – that is the person who files for the divorce and the other spouse will be the Defendant – the person who signs the affidavit of defendant. It is important for you to include the correct information on your papers. It is helpful to have a copy of your marriage certificate available with the date and place of marriage. You will need the following information for you and your spouse: complete name, date of birth, current address, telephone number, and social security number.

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You may prepare your papers for court by using the free DIY (Do-It-Yourself) Uncontested Divorce Form Program online if you and the person you want to divorce do not have children under 21 years of age, or by using the uncontested divorce paper packet available at some courthouses or by using the forms available online. If you choose to pick up the paper packet from the courthouse where you plan to file the papers, please contact the court directly before visiting the court to make sure that they have the paper packet in stock. You can locate the contact information for the court by

visiting www.nycourthelp.gov and selecting the “county” and/or “court type” in the court locator box.

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The papers that you prepare must be filed with the County Clerk’s Office. This is the office where fees are paid and where Supreme Court case files are kept within the county. You might be able to file your papers online using the New York State Courts Electronic Filing System. If you are interested in filing your case online, you can check the e-filing county list. An uncontested divorce costs at least \$335 in court and filing fees. Included in this amount is \$210 to purchase the index number when the case is started, \$95 for a request for judicial intervention and \$30 for a note of issue. The request for judicial intervention and note of issue tells the court that you are ready for your case to be assigned to a judge so that the judge may review your papers and decide whether to give you a divorce.

If you have an extreme hardship and are unable to pay the filing fees, you may ask the court to waive the filing fees by filing an application. The application requires you to explain why you are unable to pay the filing fees and provide proof of your inability to pay. It is important for you to contact the court where you are filing for divorce to learn what paperwork you will need to file. If you use the DIY (Do-It-Yourself) Uncontested Divorce Program, the program can prepare the forms for you.

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To start the case, the Plaintiff – the person filing for divorce - will need to buy an index number from the County Clerk for \$210 and file a Summons with Notice or Summons

and Complaint with the court. Review the papers very carefully and make sure that you sign them in front of a Notary Public before filing them with the court.

There are three important notices that you and your spouse should have a copy of. The defendant receives their copy of the notices along with the Summons with Notice or Summons and Complaint. They are the Notice of Automatic Orders, Notice Concerning Continuation of Health Care Coverage, and Notice of Guideline Maintenance. It is important that both of you read and understand what the notices mean.

The summons with notice or summons and complaint are given to the defendant along with the three notices and the defendant affidavit.

If the Defendant – the person you want to divorce – signs and returns the affidavit of defendant to you, you may continue on with preparing and filing the rest of the papers with the court to get your divorce case on the court’s calendar.

If the Defendant does not sign and return the affidavit of defendant to you, the paperwork must be personally delivered to (also known as served) the Defendant by someone other than you who is at least 18 years old and is able to complete and sign a document called an affidavit of service as proof that they gave the papers to the defendant in person. The Defendant will have 20 or 30 days to answer depending on whether they were personally served in or outside of New York State.

If the Defendant changes their mind, files an answer and no longer agrees to the divorce, your case becomes contested. You may want to speak with an attorney right away to get advice on what to do next.

If the Defendant does not answer they have defaulted, and you can continue with filing the rest of your papers.

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When you file the second set of papers with the court, the \$125 fee will need to be paid. After the papers are processed by the clerk's office, the assigned Judge will carefully review your papers. If there is anything missing or if the Judge needs more information, they will contact you. It is very important for you to let the court know, if you change your address or telephone number after your paperwork has been filed.

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If the Judgment of Divorce is signed, the court will let you know. Contact the County Clerk's Office to ask when and how you can get your signed and stamped judgment. Make sure to bring identification with you. Divorces are confidential and only the people getting the divorce and their attorneys (if they have them) can access the records.

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Once the signed judgment of divorce has been filed with the county clerk's office, you must let your ex-spouse know that the divorce judgment has been entered into the court records. This is called notice of entry. To do this, the notice of entry form must be completed and signed by you. You will need to make a copy of the notice of entry form and the divorce judgment that has the entry date stamped on it. The two documents must then be given to your ex-spouse by someone over the age of 18. You cannot give these papers to your ex-spouse. The person who gives the papers to your ex-spouse must then complete an affidavit of service and sign it in front of a notary. You will have to then bring the form to the county clerk and file it as soon as possible to prove that a

copy of the divorce judgment and the notice of entry form were given to your ex-spouse. After you complete this step, you are done.

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It is important for you to make a copy of all papers you file with the court, for your own records. Always make a copy before submitting papers to the court. Once you submit papers to the court, they will not be returned to you.

Note that, if at the time of marriage either person changed their last name, they can ask the court to change their last name when the divorce is granted.

Speaking of changing names, let's move on to the last legal topic we will be covering during this program: Name changes.

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There are many reasons why a person might want to change their legal name. Perhaps your legal name has never felt right to you or you feel it doesn't truly represent who you are. Maybe you are embarking on a career and want to change your name to something that you are known by socially or professionally. Whatever the reason may be, it is important to know and understand that a legal name change cannot be used for the purpose of avoiding creditors (that is people or businesses you owe money to) or to defraud (or trick) someone.

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Under New York State law, an order issued by a Judge is required to legally change your name on official documents such as your birth certificate, social security card, driver's license, passport or any other official document.

To apply for a name change in New York State, the person whose name will be changed must be a resident of New York State and must either be an adult over the age of 18 or a parent applying on behalf of a child under the age of 18. Today, we will be focus on adult name changes. For information about a child name change visit www.nycourthelp.gov.

It is always best to contact the court you will be filing your paperwork in, to confirm what documents you will need to file your papers.

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If you are an adult over the age of 18 and live in New York City, you may file your name change papers in NY City Civil Court. The filing fee is \$65.00. If you live outside of New York City, a name change can be made in the County Court or the Supreme Court of the county where you live. Outside of New York City the filing fee is \$210.00. If you are unable to pay the court costs and fees, you may ask the court for a fee waiver. For information about fee waivers visit www.nycourthelp.gov. Even if the court fees are waived, you will still be responsible to pay any fees that the newspaper charges to print your name change. More on this later.

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To prepare a name change application, you will need the court papers asking for the name change which includes the name change petition and proposed order. If you are filing for a name change within NYC you may visit the NYC Civil Court page and click on “representing yourself” on the left menu bar, and then clicking on “free court forms.” If you scroll down the page, there is a name change section with helpful forms for you to use. If you are filing for a name change outside of NYC, you may visit the Supreme

Court or County Court webpage for the county you will file your papers in and check for any available forms on their sites. You can also access the free DIY Name Change Program anywhere that you have access to the internet and a computer or mobile device.

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The DIY Name Change Program is perhaps the easiest way to prepare your paperwork for free. The program asks you a series of questions and using the information that you enter; creates the papers you need to file in court along with step-by-step instructions including where to file the paperwork. The program is also designed to prepare papers to ask for a fee waiver if you need to ask the court for one.

Once all the information in the papers is complete, the petition must be signed in front of a notary public. Be prepared to show the notary your photo identification. Be sure to sign the petition and the verification in front of the notary. Once the papers are notarized, remember to make a copy of the papers for your own records.

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Along with the court papers that need to be filed, you must provide proof of birth. This may include your birth certificate (the copy with the bumpy/raised seal) or if you were born outside of the United States of America, in a country that doesn't issue records of birth, contact the Embassy or nearest Consulate in the U.S. for the country where you were born.

If you don't have a certified copy of your birth certificate and were born in New York City, you can get a certified copy of your birth certificate from the Office of Vital Records, Department of Health, 125 Worth Street, New York, New York 10013.

Website: <http://www1.nyc.gov/site/doh/services/birth-certificates.page> Online orders cost \$15 for each certificate plus an \$8.30 processing fee for each order. At this time, “due to the covid-19 pandemic ... in-person orders of NYC birth certificates are suspended until further notice.” There is also an option to order a birth certificate by mail. You may visit the NYC Department of Health website for more information.

If you were in New York State, outside of New York City, you can get a certified copy of your birth certificate from your local City Hall for \$15.00 or you can get it from the New York State Department of Health, Empire State Plaza, Albany, New York 12237. The cost is \$30.00 and takes about 10 weeks by mail.

Website: https://www.health.ny.gov/vital_records/birth.htm

If you are filing your papers in Supreme Court, you must also submit a request for judicial intervention. There is no fee to file the request for judicial intervention however as we mentioned before, there is a filing fee for the name change petition.

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There might be other papers that you will need to give to the court depending on your situation. For example, if you have been convicted of a crime and you served your sentence, you will need a copy of the Certificate of Incarceration or Certificate of Disposition; If you have had a bankruptcy, you will need a copy of the judgment along with the Petition; If you have any legal judgments or liens, you will need to attach copies to the Petition; If you are a part of any other court cases, you will need to attach copies of the court papers.

The Judge may also ask for more information or documents, depending on your situation.

Remember that any documents you give to the court will be part of the court record and you will not get them back, so make copies before submitting them to the court.

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Once you are ready to file remember to make a copy of your paperwork for your own records. Make sure to bring proof of where you live and who you are along with your court papers and filing fee to the court that you are filing your papers with. You may want to call the court that you are filing your paperwork at in advance to make sure you have everything you need and to double check how the papers are being accepted. You can locate the contact information for the court by visiting www.nycourthelp.gov and selecting the “county” and/or “court type” in the court locator box. Your papers will be reviewed and submitted to a Judge.

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If the Judge approves your name change, the court will tell you what newspaper you will need to publish your new name in. The newspaper will charge a fee to print your name change.

The Judge can also direct you to tell others about your name change. For example, depending on your situation, the Judge can direct you to tell the US Citizenship and Immigration Services, Selective Service System, a current spouse, or an ex-spouse, Bankruptcy Court, NYS Criminal Justice Services and anyone else that the Judge thinks should be told.

SLIDE 64

The New York State Unified Court System offers many free resources that you can use without stepping foot inside a courthouse. There are many online tools and resources that may be accessed using internet service and a computer or mobile device.

SLIDE 65

CourtHelp is a hub of information where you can learn about the law and court procedures related to many areas of law. CourtHelp is currently being updated to reflect changes in the law, issues related to Covid-19, and other legal developments. You can access the website by typing www.nycourthelp.gov into your search bar in any internet web browser. Once on the page, you will see that there are bolded headings that alert you to the different main categories of information. Underneath each heading are more specific topics that you can quickly access. When you click on the bold headings you will be taken to a main page that will explain the information included in that section. At the bottom of each page, there is a “related information” box. The hyperlinks located within that box will bring you to other pages with information that might also be helpful to you.

On the right side of the screen, there are clickable logos that will take you to webpages with more information. For example, if you click on the “Ask a Law Librarian” logos you will be taken to a page where you can type in a legal research question.

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On this page you can see the recent and popular questions previously answered.

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By clicking on the Americans with Disabilities Act logo, you will open the main New York State Courts accessibility page. Please see the information in the yellow box specific to

getting disability accommodations during the Covid-19 public health crisis. One key point to mention is that if you have received an e-mail Skype for Business or Microsoft Teams invitation for a court proceeding, and need an accommodation due to a disability, it is important that you contact the judge's chambers or other court staff that sent you the email as soon as you receive the invitation.

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The court locator box allows you to find a court address and where available, the telephone number and website by selecting the county and/or court type.

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The Quick Links box located at the bottom of the page, includes links to pages that may be useful. There is a legal glossary that explains legal terms you might be unfamiliar with; access to Do-It-Yourself Form programs that prepare papers for you to file in court (which will be discussed shortly); a link to search the entire CourtHelp website by topic; a link to court based Help Centers (which will also be discussed shortly), links to help you find a lawyer, and important contact information including 1-800-courtny which is staffed by court employees ready to answer your questions.

SLIDE 70

The court offers free online programs to help you prepare papers for court. DIY Form programs are document assembly programs. To access them, you need internet service and a computer or mobile device.

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The programs ask you a series of questions, and using your information create easy to read forms that can be filed in court. Along with the forms, you receive step by step instructions that explain how to complete and file the forms.

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To print the forms, you must have access to a printer, or you may create an account on law help interactive and save your forms to print at a later time. Some courthouses may have printers available for use. Contact the court directly to ask if there are printers available for you to print your DIY forms from. Using the DIY form programs is completely free and reduces the amount of time you must spend at the courthouse.

SLIDE 73

Court based Help Centers are available to provide free information about the law and court procedure to anyone who does not have an attorney. The estimated number of people who visited Help Centers has grown from 135,000 in 2014 to 210,000 in 2019. To access the Help Center directory, visit www.nycourthelp.gov and click on Help Centers in the Quick Links box.

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Visit the Office for Justice Initiatives website at www.nycourts.gov/oji regularly to get information about programs and resources that may help you.

During the covid-19 health crisis, remember to visit www.nycourts.gov to stay up to date with the latest news and to access information available to help you navigate the courts during this time including information about virtual proceedings and eviction proceedings.

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As we wrap up the program, I would like to take a moment to review some of the frequently asked questions that Help Centers throughout New York State have received during the covid-19 health crisis.

SLIDE 76

Q. Are New York State Supreme Courts handling divorce cases during Covid-19?

A. Yes. New York State Supreme Courts are hearing divorce cases during Covid-19.

SLIDE 77

Q. Where do I take my divorce papers?

A. Divorce papers are submitted to the county clerk's office, please contact your local county clerk's office to determine the filing procedure during Covid-19.

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Q. I want to appeal a matter to the Appellate Division; where should I file my notice of appeal?

A. The notice of appeal should be filed with the clerk of the court where the action was commenced. The County Clerk is the clerk of the Supreme and County Courts. A notice of appeal from a Family Court or Surrogate's Court matter should be filed with the clerk of that court.

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Q: I know I need my mother's notarized consent to file a small estate proceeding.

However, the doctor said she is high-risk for COVID so she can't leave the house to get the consent form notarized. What should I do?

A. The court will accept a virtual notarization. Contact the court directly to learn how to get her signature notarized virtually.

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Q. Are the courts open, and if so how can we submit our paperwork?

A. The courts have continued to operate throughout the covid-19 health process. It is always best to contact the court directly to ask what their process is for submitting paperwork. If you do not have the contact information for the court visit

www.nycourthelp.gov and using the court locator box enter the county and/or court type and select find the court.

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To learn the answers to your questions, visit www.nycourthelp.gov for information and to get contact information for available Help Centers. Remember, the mission of the Office for Justice Initiatives (OJI) is to ensure meaningful access to justice for those passing through the doors of every New York State court - regardless of income, background or special need, in accordance with NYS Chief Judge Janet DiFiore's Excellence Initiative.

We hope that this program has provided you with useful information and invite you to visit our webpage at www.nycourts.gov/oji for information about future news and events.