

# Uncontested Divorce (3:V)

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by the Law Students' Legal Advice Program on June 23, 2024.*

## A. Required Documents

If the spouse is trying to do the divorce on their own, the following information details the basic documents that they will need. For information on handing your own uncontested divorce, see <https://www.familylawinbc.ca/separation-divorce/getting-a-divorce/do-your-own-uncontested-divorce>

### 1. Marriage Certificate

Any official, **government-issued** form of marriage certificate or registration of marriage can be accepted. Importantly, it **cannot** be a church-issued document, marriage license, or slip of paper attesting to the celebration of the marriage. In some areas of the world, it may be difficult to obtain an official government document. If the marriage certificate is in a language other than English or French, an official certified translation and an affidavit from the translator must be provided. Claimants who require translation can be referred to Mosaic Translations, which can be reached at **(604) 254-0469**, or to the Society of Translators and Interpreters of BC at **(604) 684-2940**. Claimants who were married in Canada can request a copy of their marriage certificate for about \$27 (in BC) from the Department of Vital Statistics.

### 2. Photograph of the Spouse

Claimants must have a recognizable photograph of the spouse. The photograph is for service purposes and will not be returned immediately. The process server usually returns the photo with the affidavit of personal service. They should also provide information about how to locate the spouse (i.e. their address, their employer's address, the make and model of their vehicle).

### 3. Copies of Any Court Orders or Separation Agreements

These documents can be attached to the divorce affidavits as exhibits.

If the client or spouse had previously started a divorce action, they must provide a filed copy of the Notice of Discontinuance that authorized discontinuance of that action.

If a separation agreement is the only document signed between the parties that involves guardianship, parenting arrangements, and consent and support of the children (i.e. if there are no court orders), the agreement may be filed in either the Provincial or the Supreme Court and enforced as a court order. Section 44 of the *FLA* allows for written agreements respecting parenting arrangements, section 148 allows for written agreements respecting child support and section 163 allows for written agreements respecting spousal support. The separation agreement does not need to be filed in Court to obtain a divorce order. However, if there are children of the marriage, the agreement should be attached to the affidavit regarding child support as evidence of the parties' agreement.

## B. Joint or Sole Application

For joint applications, in addition to the original Notice of Joint Family Claim, two additional copies will be required—the original is filed at the registry and the two copies as personal records. See **Section H: Service**, below, regarding sole applications.

A joint application is quicker, less expensive, and less complicated than a sole application because a Notice of Joint Family Claim need not be served (*Supreme Court Family Rules*, r. 2-2). However, if lawyers or a mediator is preparing the joint claim, the lawyer needs to advise each of the clients that:

- The lawyer is acting for both parties;
- No information received in connection with the matter from one client can be treated as confidential from the other client;
- If a conflict develops that cannot be resolved, the lawyer cannot continue to act for both of them and may have to withdraw completely; and
- Both parties will need to seek out independent legal advice.

## C. Filling Out the Notice of Family Claim

The Registry is extremely scrupulous, and documents containing inconsistencies or omissions will be rejected. This could cost the client valuable time. Clients should be advised to check and re-check every document, especially dates and the spelling of names.

Do not use abbreviations, even common abbreviations such as “n/a”, “a.k.a.”, and “BC”. Answer every paragraph in full.

If at any time, one party is aware of errors in the supporting documents (such as the certified copy of registration of marriage), the pleadings must be amended to show the true facts as that party knows them. This is because the party requesting the divorce must swear an affidavit as to the correctness of the documents and the statements contained therein.

## D. Style of Proceedings

The style of proceedings should use the names of both parties as they appear on the certificate or registration of marriage. The previous surname on the marriage certificate is not an alias and you need not use “also known as” or add it to the style of proceedings. If the certificate shows a typographic error, you may wish to include in the style of proceedings the name the party presently uses and “also known as” (or “formerly known as,” as appropriate) the name on the certificate.

## E. Backing Sheets

The backing sheet is the last page of the entire document, placed backwards so the documents can be easily identified when folded. Orders filed at the Registry for entry require backing sheets. Some Registries may also require backing sheets on all documents filed.

## F. Notice of Family Claim

The Notice of Family Claim will include general information about the parties, the spousal relationship history, prior court proceedings and agreements, as well as what is being sought by the claimant. The appropriate schedules should be completed and attached to the Notice of Family Claim.

Follow the directions outlined on the forms carefully.

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Under Part 2 of the Notice of Family Claim, when the parties began living in a marriage-like relationship is usually (though not always) when the parties first began cohabiting. Conversely, the date of separation is the date the parties stopped living in a marriage-like relationship, even though they may have continued to live together under the same roof. If the breakdown of the marriage is due to separation, the date of commencement of the separation should be noted.

Under Part 3 of the Notice of Family Claim, any separation agreement or financial agreements determining any matters related to the dissolution of the marriage, any orders from the Courts, and/or other proceedings in the Courts should be noted. Details such as the date of the agreement, the matters resolved, and whether or not the agreements are still in effect should be set out, but the more specific details of the agreements do not need to be set out.

If the claimant is only seeking a divorce and has settled all other corollary matters without the need for court orders, they need only fill out the Notice of Family Claim, Schedule 1 – Divorce, and, if applicable, Schedule 5 – Other Orders if they want an order changing their name under the *Name Act*.

The forms must include an address for service. It should include a fax number and/or an email address. The address must be kept up to date with the Court and opposing party.

## 1. Schedule 1: Divorce

Place a check for each applicable box and fill in the form accordingly. Addresses must be accurate. Do not use post office boxes. A government-issued certificate of marriage or certificate of registration of marriage must be filed where the party intends to seek a divorce.

## 2. Schedule 2: Children

Place a check for each applicable box and fill in the form accordingly. Under the *DA* and the *FLA* s. 146, children who are over the age of majority but whose illness leaves them unable to leave the care of a parent or whose attendance of a post-secondary institution leaves them financially dependent on their parent may be considered a dependent child. **Which Act you are seeking an order under (the *DA* or *FLA*) can have an impact on the parties' rights. Before checking one box or the other where it specifies the Acts, seek legal advice from a lawyer.**

## 3. Schedule 3: Spousal Support

Place a check for each applicable box and fill in the form accordingly. A lawyer should be consulted for advice on entitlement to spousal support. **Which Act you are seeking an order under (the *DA* or *FLA*) can have an impact on the parties' rights. Before checking one box or the other where it specifies the Acts, seek legal advice from a lawyer. The test for awarding spousal support is the same, however, there are different limitation dates for the two.**

## 4. Schedule 4: Property

Place a checkmark for each applicable box and fill in the form accordingly. If one of the parties wishes to obtain unequal division of family property and family debt, details and reasons should be set forth here. **Only a lawyer should deal with property issues.**

## 5. Other Orders

Place a checkmark for each applicable box and fill in the form accordingly. If the claimant is seeking a name change, they should indicate the full current and new names here.

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## G. Child Support Affidavits

Whenever there are children of the marriage and the requisition for a Desk Order Divorce is ready to be submitted, a Child Support Affidavit must be filed. Even if the matter of guardianship, etc. is to remain in the jurisdiction of the lower court, a judge is still required to satisfy themselves that reasonable arrangements have been made for the care of the children, hence the requirement for financial information. It is imperative that all income of both the child support claimant and the respondent be listed on the affidavit.

## H. Service

Personal service is only required if the client is making a sole application.

Claimants **must** have a third party, over the age of 18, serve their Notice of Family Claim. Clients who choose to use a professional service should provide the server with a photograph of the spouse. The server should be told to take down the spouse's driver's licence number. Taking these steps will ensure that the Court does not question the validity of the service.

If the respondent's address is not known, the claimant should write letters to friends and family members to try to locate him or her. The client might also want to consider hiring the services of a skip tracing agency. This takes extra time but will avoid the additional costs associated with a substitute service application.

In a substitute service application, the claimant must make an extra application to obtain permission to serve the respondent in a way other than that normally required by the *Supreme Court Family Rules*. Options include posting a copy of the substitution service order and the pleadings in the Court Registry, mailing them to the respondent's last known address by registered mail, serving an adult in the house where the respondent is believed to reside, or serving the respondent through e-mail, Facebook, or other online methods.

## I. Costs

Claimants should always double-check the following court fees because they tend to change:

- Ordering a marriage certificate or registration of marriage: \$27 for couples married in BC. It can be ordered by mail or in person. Refer to <https://ecos.vs.gov.bc.ca/> for more information.
- Court fee to file the Notice of Family Claim for divorce: \$210 (\$200 for filing the Notice of Family Claim and \$10 for filing the registration of divorce)
- Fee for Serving the Notice of Family Claim on the respondent: varies depending upon where the respondent lives. The average fee is \$100. Process Server Fees for the Lower Mainland can run from \$69 plus \$20 for an affidavit, or \$70 to \$100 all inclusive. For other parts of BC or Canada, it can cost \$200 or more for all attempts.
- Notarization: between \$25 and \$50, if the affidavit is already completed.
- Final application fee: \$80 (for requisition for the Desk Order Divorce).
- Fee to apply for a certificate of divorce: \$40. (Note that there is no requirement to apply for a certificate of divorce. Once the Order for divorce has been made and is effective, the parties are divorced.)

**NOTE:** There is no fee to file a separation agreement in Provincial Court. There is a fee of \$90 to file a separation agreement in the Supreme Court.

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## **J. Approximate Length of Time for Divorces**

Simple divorces, with or without children, take approximately three to four months to complete, or one to two months in the case of joint applications. Substitute service divorces take longer, an additional one or two months depending on the terms of the order for substitute service. Please note that these time estimates do not account for delay caused if the Court rejects some portion of the material filed and it needs to be redone.

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