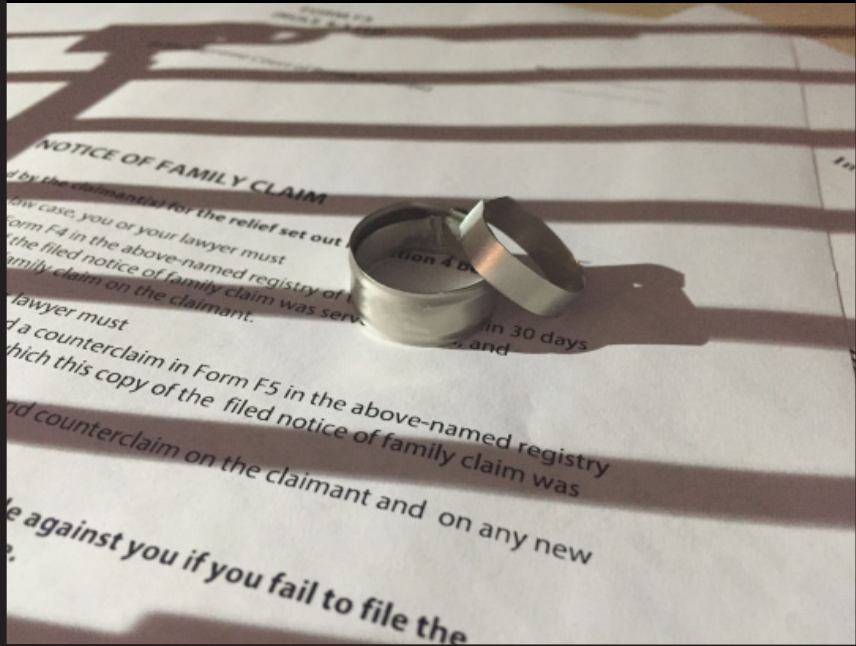


Family law for prisoners in British Columbia



Divorce

This booklet explains the steps you need to take to legally end your marriage in British Columbia.

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Ending your marriage

If you are married, the only way that you can legally end your marriage is to get a divorce.

In British Columbia, only the BC Supreme Court can grant a divorce. To get a divorce in BC, at least one spouse must live in BC and have lived here for 12 months prior to applying for the divorce.

There are three grounds (reasons) for getting a divorce:

- you have lived apart from your spouse for at least one year. This is the most common reason to ask for a divorce and is often called a “no-fault divorce”;
- your spouse was unfaithful (adultery) and you have not forgiven your spouse; or
- your spouse treated you with physical or mental cruelty that you haven’t forgiven and that makes it impossible for you to continue living together with your spouse.

You should talk to a family law lawyer if you are seeking a divorce because of adultery or cruelty. These divorce cases are more complicated and will not be discussed in this booklet.

It is a good idea to talk to a lawyer before you begin your divorce application to find out what your rights and responsibilities are. You might have a right to property, to spousal or child support, or to a division of assets or pensions. Or you might have obligations to pay spousal support or child support or to take responsibility

for certain debts. It is common for former spouses to finalize a separation agreement or court order before filing for a divorce. This is usually a good idea.

If you don't make a claim for spousal support or division of property or debt within 2 years of being granted a divorce, you might lose your right to them.

Sometimes, people will apply to the Supreme Court just for a divorce and will then deal with other issues by agreement or in the Provincial Court. Both the Supreme Court and Provincial Court can deal with issues concerning children, child support and spousal support. But, only the Supreme Court can grant a divorce or deal with the division of property and debt.

If you don't know a lawyer, you can call the Lawyer Referral Service at 1-800-663-1919. You can also contact Prisoners' Legal Services for help finding a lawyer.

Uncontested Divorce

An uncontested divorce is also known as a “desk order divorce”. They are called “desk orders” because you do not have to go to a court hearing to get the divorce; the judge will read the documents you filed and make the Order.

A judge will grant a desk order divorce if:

- you have correctly filled out and filed all the right documents with the court registry;

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- the judge is satisfied that you have proven the reason for the divorce; and
 - the judge is satisfied that appropriate arrangements have been made for the support of your children (if you have any).

To get a desk order divorce, you and your spouse have to agree on all the orders you're asking the court to make. For example, either you or your spouse might make a claim about parenting arrangements for your children, child support, spousal support, or the division of any property and debts. If you and your spouse come to an agreement on those issues, then you can file for an uncontested divorce.

You normally have to wait until you and your spouse have been separated for one year before the court will accept your application for divorce and a judge will grant you the divorce.

Contested divorce

If you and your spouse want to get divorced, but you cannot agree about parenting arrangements, child support, spousal support, or how to divide property and debt, then you will have what is known as a “contested divorce”.

Contested divorces are more complicated than uncontested divorces. Unless you and your spouse can come to an agreement, you will need to have a court hearing and let a judge decide on the issues.

It is a good idea to talk to a lawyer if you and your spouse cannot agree on arrangements. If you don't know a lawyer, you can call the Lawyer Referral Service at 1-800-663-1919.

How to apply for an uncontested divorce

To start the process for an uncontested divorce, you need to file a Notice of Family Claim in the Supreme Court. You need to then get a process server to serve your spouse with a copy of the filed Notice of Family Claim.

You can file a Notice of Family Claim even before you have been separated for one year, but you cannot ask the Court to grant you the divorce until you have passed one year of separation.

Your spouse has **30 days** to file a Response to the Family Claim. Your spouse might also file a Counterclaim if they want to ask the court for any orders. If your spouse does not file a Response or files a Response agreeing to what you are asking for, then it is an uncontested (or undefended) divorce.

If the following are true, you can apply for an uncontested divorce:

- you and your spouse agree to the divorce or your spouse did not oppose your application for a divorce;
- you and your spouse have settled all your family law issues, such as parenting, child and spousal support or the division of property and debt. In other words, you and your spouse have come to an agreement about these issues so you do not need the court to decide them for you;
- either you or your spouse has lived in BC for at least one year and one of you is still living in BC at the time you ask the court to grant you the divorce Order; and
- you and your spouse have been separated for more than one year.

If you and your spouse are on good terms, it might be easier and quicker to ask your spouse (if your spouse is in the community) to file for the divorce. If you do not file a Response to the Notice of Family Claim, then it will be an uncontested divorce.

You and your spouse can also apply for a divorce by filing a Joint Notice of Family Claim, but that might be more difficult to do because you will both need to sign documents and swear affidavits.

Before filing any court documents, it is important to get legal advice so you can understand your rights and responsibilities.

How much does a divorce cost?

You have to pay two different sets of court fees to get a divorce. The first fee is \$210. This covers the \$200 for filing the Notice of Family Claim and the \$10 for filing the Registration of Divorce. The second fee is \$80 and comes later when you file the Requisition asking the Court to make the Order for a divorce.

If you are paying for the divorce on your own and have to request the funds from your savings account in the institution, you should factor in the amount of time it will take for your request to be processed by the Correctional Service Canada.

You might also have to pay for other things, such as for a process server to deliver your documents or to have affidavits sworn. Some institutions have an employee who is able to commission an affidavit. If you do not have an original marriage certificate or registration of marriage, you will likely have to pay to get one.

Steps to apply for an uncontested divorce

1. Gather your documents

Marriage certificate: In order to file for a divorce, you must give the court registry an original marriage certificate or registration of marriage at the same time you file the Notice of Family Claim. If you don't have one of these and if you were married in BC, you will need to contact the BC Vital Statistics Agency to get your marriage certificate.

If you were married in another province, or outside of Canada, you will need to contact the appropriate office in that location. You can contact Prisoners' Legal Services for help in finding who to contact.

If your marriage certificate is not in English, you will need to have it translated by a certified translator. The translator will have to swear an affidavit.

If there is no way you can get an original marriage certificate, you can state that in the Notice of Family Claim and explain why you cannot get the document.

Photo of spouse: The Notice of Family Claim must be personally served on your spouse, unless you get an order from the court allowing you to serve your spouse another way. A photo of your spouse will help the person serving your spouse to identify them.

Separation agreement or court order: You might have made a separation agreement with your spouse that deals with parenting, child support, spousal support, and the division of property and debts, or you might have a court order that deals with these things

(see the “Separation Agreements” section later in this booklet for more information). If so, you should attach a copy of the agreement or order to the affidavit you will swear and file when asking the court to make the divorce Order.

Court forms to be completed: Depending on your circumstances, you might need to fill out up to 13 forms. The main forms are the Notice of Family Claim, the desk order divorce affidavit, the child support affidavit, the Requisition for a divorce order, and the draft divorce order.

You can contact Prisoners’ Legal Services for help in getting the correct forms to complete.

2. Prepare and file your Notice of Family Claim

To get a divorce, you must start by filling out a Notice of Family Claim, filing it at the court registry, and having it personally served on your spouse. You will also need to fill out the Registration of Divorce form. This form is only available on-line, so you will need someone to print out the form for you. It needs to be filed with your Notice of Family Claim.

Once you’ve finished filling out your forms, you need to file the original and **3 copies** of the Notice of Family Claim in the Supreme Court Registry:

- the registry will keep the original;
- one copy is for you; and
- one copy is to be served on your spouse.

An additional copy (does not have to be an originally stamped copy) is to be given to the process server or the person who served

the Notice of Family Claim on your spouse. They will need a copy to attach to their Affidavit of Personal Service.

3. File forms at registry

Have someone take the original document and the three copies, plus the \$210 filing fees, to any Supreme Court registry for filing. The registry can only take payment of the filing fees by cash or debit; the registry does not accept credit cards.

You cannot ask the court to make the divorce order until two things have happened:

- the 30 day timeline for your spouse to file a Response has passed; and
- you and your spouse have been separated for more than one year.

4. Prepare your affidavit

Because applying for a desk order divorce doesn't require you to appear before a judge, you must fill out and swear or affirm specific affidavits. The Affidavit – Desk Order Divorce (Form F38) sets out the facts of your marriage and separation, and gives information about any children. If you have children, you will also have to complete the Child Support Affidavit (Form F37) which gives information about the arrangements for the support of children.

You can contact Prisoners' Legal Services for help getting these forms.

How to swear or affirm an affidavit

A lawyer, notary public or commissioner for taking oaths must witness you swearing or affirming your affidavit. Some institutions have an employee who is a commissioner for taking affidavits who might be able to help you.

If you need to find someone to come into the institution to take your affidavit, you should mention that the documents are an Affidavit — Desk Order Divorce and Child Support Affidavit (if you have children) for your divorce. Make sure you tell the person that you are not asking for any legal advice.

The person who takes your affidavit must identify you. You will need to show photo ID, such as your Prison Identification Card.

The person taking your affidavit will ask if you have read the documents and if you swear (or affirm) that the contents are true. If you answer yes, you sign the documents, and the person witnesses your signature.

5. Complete the final forms

Before you can make your final application for divorce, you need to fill in and file four more forms:

- A Requisition that tells the court what you want (Form F35). You'll be asking for a divorce. You don't normally need to ask for a name change because you can return to

your maiden name without a court order. The Requisition also tells the court what documents you're providing to support your application.

- A separate Requisition to prove that the divorce is undefended (Form F17). You need to fill this out to ask the registry to search their files for a Response to Family Claim. Under "Required," write in "Please search for a Response to Family Claim or Counterclaim filed in this matter."
- A Certificate of Pleadings that the registry staff signs to show the judge that they've checked everything over, and that they are satisfied everything is correct (Form F36).
- A draft Final Order that sets out what orders you want the court to make (Form F52). The final order you draft will become your divorce order, once the judge has signed it.

6. Make the application for a divorce order

Now that you've completed all the documents, you need to make your final application for the divorce. To do this, you need to have someone take your documents (unstapled) to the registry in the following order:

- Requisition (Form F35)
- Draft Final Order (Form F52)
- Requisition (proof that the case is undefended) (Form F17)
- Certificate of Pleadings (Form F36)
- Affidavit of Personal Service (prepared by the process server) (Form F15)

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- Affidavit - Desk Order Divorce (Form F38)
 - Child Support Affidavit (Form F37), if you have children

If you have other court orders or a written separation agreement, they should also be attached to your Affidavit - Desk Order Divorce. These agreements or orders must agree with what is in your divorce application. This is also when you must pay \$80 to the registry for filing the Requisition asking for the divorce.

The registry staff will be able to tell the person filing on your behalf when your divorce order will likely be ready.

If there are any problems with your application for the divorce, the registry will send you a memo telling you what changes need to be made. When you send in the corrected documents, you do not need to pay the filing fees again.

Separation Agreements

When you and your spouse decide to divorce, it's a good idea to consider having a separation agreement to address some of the issues that arise because of the breakdown of your marriage. A separation agreement is a written record of how you and your spouse have settled the issues.

These issues might include:

- Who will take care of the children?
- How will you and your spouse make decisions about your children?
- How will you and your spouse divide property and debt?

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- Will one of you pay child support to the other?
 - Will one of you pay spousal support to the other?

If you can solve these issues through a separation agreement, it means you will normally be able to apply for an uncontested divorce and save yourselves the time and expense of going to court.

If you and your spouse can work together to reach a fair agreement, it is important that you have it written down and that both of you sign it. You should also have someone witness your signatures.

Some important rules about separation agreements include:

- You and your spouse must be completely honest with each other when providing information to go into the agreement.
- If you and your spouse have children, any arrangements you make concerning them have to be based only on what is in the best interests of your children.
- If you file the agreement with the court, it will be enforceable like a court order would be.
- If your agreement is fair, the court will normally respect it, but there can be some situations when the court will replace all or part of the agreement with a court order.
- You should never feel pressured to sign an agreement. You should always get independent legal advice, especially if you're worried that the agreement might be unfair to you.

A separation agreement does not have to be written immediately after you separate and most often they are not. You can write the

agreement with your spouse, or you can have a lawyer write it up. Some things you should keep in mind are:

- An agreement can't break the law; for instance, if the law says that a parent has to pay child support, the agreement can't state that that parent does not have to pay child support.
- You should have a lawyer look at the agreement before you sign it, but you and your spouse cannot have the same lawyer give you legal advice.
- Read the agreement carefully; if you cannot read English well, ask someone to read the agreement to you.
- Make sure you understand what you are agreeing to; don't agree to things that you know you cannot do.

Most separation agreements last until one or both of you die; most are meant to be permanent. Agreements that end sooner will say so.

You or your spouse can change or cancel the agreement as long as the other person agrees and you make those changes in writing. If you cannot agree, you might want to try some sort of alternative dispute resolution process like mediation, collaborative divorce, or settlement meetings with lawyers. If you still cannot agree, you might have to go to court.

If your spouse is not following what is in the agreement, then you might have to go to court to enforce the agreement.

You don't need a separation agreement to separate, and you don't need to see a lawyer or a judge to separate. You and your partner don't even need to agree to separate. If you have separated, and if

you have children or property or need financial support, it is best to have a formal written agreement if you can reach a settlement on these issues and want to avoid going to court.

It is highly recommended that you contact a lawyer for assistance with your divorce and or separation agreement.

For help in finding a lawyer, contact the Lawyer Referral Service at 1-800-663-1919.

Where to find forms

If you have someone in the community who is able to help you, they can find more information and many of the forms you will need to fill out on the internet.

Information about how to file for divorce and the forms you will need can be found here:

The Legal Services Society of BC website:
<http://www.familylaw.lss.bc.ca/guides/>

The Supreme Court of BC website:
<http://www.supremecourtbc.ca/family-law>

Department of Justice website (for Registration of Divorce Form):
<http://www.justice.gc.ca/eng/fl-df/divorce/crdp-bead.html>

Prisoners' Legal Services

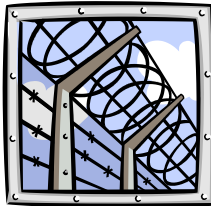
Unfortunately, Prisoners' Legal Services is not funded to provide legal representation for family law issues.

There is some limited legal aid through the Legal Services Society for family matters where children are taken away or might be taken away by the Ministry, or in an emergency situation to ensure the safety of your children. You can find out whether the Legal Services Society will provide a lawyer in your case by calling 1-866-577-2525.

If you are a prisoner in British Columbia, you can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty or about health care or human rights issues.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 604-681-9736. Once you have a referral, you can call Prisoners' Legal Services directly at 604-636-0464 (if you are in a provincial jail) or 1-866-577-5245 (if you are in a federal prison).

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



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