



Little Black Book Of **DIVORCE**

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Note From The Author:

I understand the challenges facing anyone going through a divorce. During a time of change and stress, there are so many tasks that need to be done, so many papers that need to be completed, and so many financial affairs that need to be attended to. It can be overwhelming and exhausting. This “Little Black Book of Divorce” is designed as a general guide to help organize your thoughts and help answer some of the most common questions I receive while handling a client's separation, but before they are officially divorced.

The checklist at the back of the book is a tool to help you keep track and take notes. Always consult your family law lawyer for help and questions.

Remember:

Tough times don't last. Tough people do. - Gregory Peck

Question:

What is a divorce?

Answer:

A divorce is the legal dissolution of a marriage, which is granted by a court.

Question:

How do I get a divorce?

Answer:

In order to get a divorce, you need to apply to the court in your jurisdiction. Your application can be filed in one of two courts:

1. Superior Court of Justice
2. Family Court branch of the Superior Court of Justice

Question:

Which court should I file my Application in?

Answer:

The Superior Court of Justice has sole jurisdiction in cases that involve divorce and the division of marital property.

The Family Court branch of the Superior Court of Justice hears all types of family law cases and is not limited to only divorce and division of marital property cases. It is important to note that not all jurisdictions have a Family Court branch of the Superior Court of Justice.

Question:

How long does it take to get divorced?

Answer:

In order to be able to get a divorce, you have to have been separated from your spouse for at least 1 year with no chance of getting back together, or you have to be able to establish one of the following bases to show a breakdown of the marriage:

1. Mental or Physical Cruelty.
2. Adultery .

If you have been separated for at least 1 year, and your claim is for a divorce only (no claim for custody, access, support or division of property), the process can be completed within 4 to 6 months.

If your application includes any claims accompanying your claim for divorce, it is difficult to give a timeline since some issues can be very complicated. If the parties do not agree on all of the issues, then the process can take several months or even several years.

Question:

What is the cost of getting divorced?

Answer:

In Ontario, the court fees for getting a divorce are \$447. The first payment of \$167 is due when the application for divorce is filed. An additional court fee of \$280 is paid before the divorce is reviewed by the court.

Question:

How can I pay the court fees?

Answer:

Court fees can be paid by:

- Cheque
- Cash
- Money order

Cheques and money orders should be made payable to the Minister of Finance.

Question:

What happens if I cannot afford the court fees?

Answer:

If you can't afford your court fees, you may be eligible to have them waived. Please see the back of this book for resources on fee waivers.

Question:

Do I have to have a lawyer to file for divorce?

Answer:

People can file for divorce on their own, without the assistance of a lawyer. It is advisable to consult with a lawyer before filing for a divorce without legal assistance. You may have legal rights or obligations that can be affected by getting divorced that a lawyer can advise you on before you proceed with the application process.

Question:

If I still live with my spouse, can I be considered separated so I can get divorced?

Answer:

People that live together in the same residence can still be considered separated. They just have to show that they have been living separate and apart in the same home. The courts expect to be shown that the two people, though they live in the same residence, are no longer in a spousal relationship. If you are unsure if your situation would be considered a spousal relationship or living separate and apart, you should consult with a lawyer.

Question:

How many types of divorce applications are there?

Answer:

There are three types of divorce applications:

1. Simple divorce application
2. Joint divorce application
3. Divorce application with other claims

Question:

What is a simple divorce application?

Answer:

A simple divorce application is when you make a request for a divorce only with no other claims, such as custody, access or support. Either of the spouses can prepare the application (Form 8A) or it can be prepared by the spouses jointly.

If only one spouse is preparing the application, it needs to be served on the other spouse after it has been issued by the court.

Question:

What is a joint divorce application?

Answer:

A joint divorce application is a request made by both spouses for a divorce order, with or without other terms, such as support, custody or access. Both spouses must complete the documents necessary to obtain the divorce and have them issued.

Question:

What type of application do I use if we have issues that haven't been decided yet, such as custody, access or support?

Answer:

You need to prepare an application (general) (Form 8) and outline all of the issues that need to be decided in your case. Once your application (general) has been issued, served and filed, you can bring a motion to sever the divorce from the other issues, so that you can get divorced before the other issues are decided.

Please note that the court may not grant the divorce before the other issues have been decided. For example, the courts want to ensure that an adequate plan has been put in place for any children, including how those children will be supported.

Question:

If my partner and I have been living together for many years and have children together but we never married, do we need to get divorced?

Answer:

Only married spouses need a divorce. However, there may be other issues that need to be dealt with due to the breakdown of your relationship, since you have been cohabiting for many years. You should speak to a family law lawyer about the rights and obligations of cohabiting spouses.

Question:

I was served with an Application for divorce. What do I do now?

Answer:

Once you have been served with an application for divorce, you have 30 days to respond. If you live outside of Canada or the USA, you have 60 days to respond. You need to respond if you do not agree with the claims made by the applicant, or if you want to make claims of your own. You would serve and file an answer (Form 10). If you do not respond by filing an answer, the applicant can ask the court to make the order that they are seeking in their application without hearing from you. You also wouldn't be able to participate in the case later on.

Question:

What if I can't afford a lawyer but I don't want to go through this process on my own?

Answer:

Legal Aid Ontario can help those who qualify by paying for a lawyer.

The Family Law Information Centre (FLIC) sometimes has advice lawyers who can help at certain times and provide general information and help to those who qualify.

Duty counsel may also be available, on the day that family cases are heard to assist parties that don't have a lawyer.

Question:

If we have a court proceeding that is ongoing, can I get divorced before dealing with the other issues?

Answer:

You can ask the court for an order to sever the divorce from the corollary issues. If you are granted this order, you will be able to file for divorce, even if you haven't dealt with the other outstanding issues (such a property issues, custody, access etc.)

Question:

If I want to deal with issues such as support, property and parenting plans, do I have to also file for divorce?

Answer:

You can deal with issues such as support, property and parenting plans, without the need for filing for divorce. You can deal with these issues through a separation agreement, or you can deal with them in court.

About The Author



Adina E. Schild

Adina is an Associate Lawyer at Hummingbird LLP's Family Law Department. She maintains a strong interest in Family Law, Real Estate, and Civil Litigation. Her desire to practice law comes from her hope to make a difference, not only in the community at large but also in individual clients' lives.

Adina has experience in helping clients dealing with separation and divorce. Her main focus is on custody and access issues that stem from family turmoil and breakdown. Adina's family law practice includes Collaborative Family Law, Simple or Uncontested Divorces, Spousal Support, Termination of Spousal Support, Child Support, Termination of Child Support, Custody and Access Rights, Mobility Issues and Rights, Division of Property, including the Matrimonial Home, Equalization of Net Family Property, Litigation Strategy and Management, Separation Agreements, Marriage Contracts, Cohabitation Agreements, Prenuptial Agreements and Representation at Mediation and Arbitration Dispute Resolution.



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