

Divorce Form Builder Instructions

About the Divorce Form Builder

The Divorce Form Builder helps you to complete uncontested divorce forms in PEI. There is a \$100.00 fee. You answer questions online and download your completed court forms. Then, you follow the instructions below to file and serve the forms.

If you have questions after reading this guide, contact Community Legal Information (CLI) at 902-892-0853 or toll-free at 1-800-240-9798. We answer the phone Monday to Thursday between 9:00AM – 3:30PM (Atlantic Standard Time). You can also email us at divorce@legalinfopei.ca

Please note: Only a lawyer can give legal advice. The Divorce Form Builder is not legal advice. Community Legal Information staff don't give legal advice. Court staff don't give legal advice. If you need legal advice, talk to a lawyer.

Will the Divorce Form Builder work for my situation?

The Divorce Form Builder is for **uncontested divorce proceedings only**. You and your spouse must agree on:

- Spousal support,
- Child support (which in most cases follows the Child Support Guidelines),
- Parenting arrangements, and
- Division of family property.

You can only use the Divorce Form Builder if you answer “yes” to all these questions:

- Is the marriage really over, with no possibility of getting back together?
- Have you and your spouse been living apart for at least one year?
- Do you know your spouse's address where they can receive documents?
- Have you or your spouse been living in Prince Edward Island for at least one year?

What counts as a one-year separation?

You are legally separated when at least one spouse does not want to live together as spouses. You must tell your spouse that you are separating from them. You can be legally separated and still live in the



family home. Examples of living separately in the same house include sleeping in different rooms and not eating together.

You must be separated for at least one year before getting divorced. Your one-year period of separation must be uninterrupted and continuous up to the date the Divorce Judgment is granted. But the *Divorce Act* does allow for **trial cohabitation**. Trial cohabitation is an effort to get back together that is 90 days or less during that one-year period. Trial cohabitation does not interrupt the one-year period of separation.

[What if my spouse and I have not settled all outstanding issues?](#)

Do not try to use the Divorce Form Builder.

Mediation may help you and your spouse to work out an agreement. In mediation, you discuss issues with your spouse and a mediator to come to an agreement. You may also want to hire a lawyer for independent legal advice.

Child-Focused Parenting Plan Mediation helps parents make an agreement about parenting time and decision-making responsibility. This service is free. Call 902-368-6928 for more information.

[Do I need a separation agreement to use the Divorce Form Builder?](#)

No, you don't need a written separation agreement to use the Divorce Form Builder. But you and your spouse must have settled all the outstanding issues of your marriage.

Frequently Asked Questions

[What is a Petitioner and a Respondent?](#)

The court forms used by the Divorce Form Builder call one party the Petitioner and the other party the Respondent. If you are using the Divorce Form Builder, you are the Petitioner and your spouse is the Respondent.

[What internet browser is required?](#)

The Divorce Form Builder is compatible with most internet browsers. Make sure your browser is updated before you start using the Divorce Form Builder. If you are having problems, update your browser, restart your computer, and try again.

Can court staff or CLI staff help me write my answers?

No. Family court staff and CLI staff can't give any legal advice. This means they can't tell you how to word responses.

What documents will I need other than the forms?

You will need to bring certain documents to the court when you file your forms. There are document checklists later in this guide that say what you need at each step of the process.

Find these documents before you begin to use the Divorce Form Builder:

- Your original Marriage Certificate from Vital Statistics. If you don't have this document, contact Vital Statistics to request a new Certificate.
- Birth Certificates for all dependent children of the marriage. If you don't have these documents, contact Vital Statistics to request them.
- Proof of current income for both you and your spouse.
- Most recent income tax returns and Canada Revenue Agency Notices of Assessment/Reassessment for both you and your spouse, where available.
- Any Separation Agreement and/or Court Order about your separation.

Will I need advice from a lawyer?

In most situations, you can use the Divorce Form Builder without advice from a lawyer.

But you may need advice from a lawyer in some situations. You should get advice from a lawyer if:

- You and your spouse have not settled all the outstanding issues of your marriage.
- You don't know your spouse's current address.
- You are unable to complete any part of the process.

What if I notice a mistake after I print my forms?

You can log in to your account and correct the mistake. Then, you can reprint your forms.

Don't use liquid paper on your forms.

How much are the court's filing fees?

There are fees for filing at each step of the process. You don't have to pay all the fees at once. In 2021, the fees for all steps were \$270.00. These fees don't include costs associated with serving papers on your spouse.

How long will it take to get a divorce?

It will take at least 3 to 6 months from the date you serve the Petition for Divorce (if your spouse is in PEI). These factors may make the process longer:

- Where your spouse lives
- If you need to make corrections or not
- When you file the forms
- If the judge believes they have enough information in the filed documents to grant the Divorce Judgment or not
- The court's schedule
- If it is necessary to have a hearing or not

What is “a child of the marriage” or “dependent child”?

According to the Divorce Act, a “child of the marriage” means:

- A child of the two spouses who is under the age of majority (age 18) and who is still in their care, or
- A child who is over the age of majority, but can't live independently because of an illness, disability, or other cause.

A child of the marriage can be a child for whom one or both spouses stand in the place of a parent. This also includes any children of the couple born before the marriage.

What do I need to know about child support?

Divorce does not end your responsibilities to children of the marriage. This includes the responsibility to pay child support. A child has the right to financial support from their parents. Even in a shared parenting arrangement, there may be child support owing.

Responsibility for child support does not always end when a child reaches the age of majority (age 18). Child support can continue beyond 18, depending on the needs of the children, including:

- Post-secondary schooling, or
- Disability.

Judges won't tolerate parents who try to avoid paying child support. A child support order granted by a PEI court may be enforced in other provinces and countries. PEI will also enforce child support orders granted in other provinces and countries.

Child support is not taxable for the receiving parent. Child support is not deductible for the paying parent.



What are the Child Support Guidelines?

The [Child Support Guidelines](#) determine the basic amount of child support. Parents can use the guidelines to calculate the amount of child support a judge would order. Judges usually follow the Child Support Guidelines when setting the amount of child support.

If you and your spouse agree, you may ask the [Child Support Services Office](#) to calculate your child support. This office uses the guidelines to do this. They can adjust your child support yearly, based on changes in the paying parent's income. To register with the Child Support Services Office, call 902-368-4109.

The judge may order a change in the child support if you and your spouse don't follow the guidelines. The judge may refuse to grant your divorce until child support is being paid.

Child Support Guidelines Officer

902-368-6220

A Child Support Guidelines Officer can help you to apply for child support, or to change an existing child support order or agreement. Child Support Guidelines Officers can't give you legal advice. This service is free.

Recalculation Officer

902-368-4109

You may be able to register your order or agreement with the Recalculation Officer to get your child support recalculated annually. Not all support agreements or orders are eligible for recalculation. Contact the Recalculation Officer to see if yours is eligible. This service is free.

What are Section 7 expenses?

Many children have special expenses parents pay for. These expenses are separate from the basic child support in the Child Support Guidelines.

Section 7 expenses include:

- Childcare expenses when a parent is working, studying, or dealing with an illness or disability.
- Medical and dental insurance premiums.
- Health-related expenses not covered by insurance or that exceed your insurance plan by at least \$100 annually per illness or event. For example, orthodontic treatment, counselling, physiotherapy, occupational therapy, speech therapy, prescription drugs, hearing aids, or glasses and contact lenses.



- Extraordinary expenses for primary or secondary school or educational programs that meet the child's particular needs.
- Expenses for post-secondary education.
- Extraordinary expenses for extra-curricular activities.

Where can I get more information about parenting and the law?

Read our publication [Parenting and the Law](#) for more information.

Steps to Get Divorced

Use the [Divorce Form Builder to Complete Your Divorce Forms](#)

1. Make sure your internet browser is updated.
2. Make an account.
3. Answer the questions.
4. Download, save, and print the court forms.

Please note:

- You will need to make copies of some forms. The document checklists below give instructions for how many copies you need. In total, you may need to print over 100 pages.
- Staple each document separately.
- Don't sign or write anything in the blank spaces on the forms. The court clerk must fill out some information. You must fill out some information in front of the court clerk.

First Filing of Documents

1. **Contact the family court to file your Petition and Designation of Address for Service.**
Call 902-368-6000 for the Charlottetown courthouse. Call 902-888-8125 for the Summerside courthouse. They will tell you when to bring your forms to the courthouse. They may tell you to send your forms digitally first, so they can check them before you bring in a printed version.

There is a filing fee. Ask the family court what it is.

Note: If you are receiving social assistance or partial assistance, you may be eligible to have court fees waived by the Prothonotary (a court official). The Prothonotary may ask you to provide proof of assistance. Contact the Prothonotary's office at 902-368-6067.

2. **Bring your forms and other documents to the courthouse.**

Note: When you file forms at the courthouse, you will sign and date them in front of a court clerk. The court clerk will keep the originals. Usually, you will leave your documents at the court

and come back later to pick up your copies. The court clerk will give you stamped copies after they file your documents.

Document Checklist

Make sure you have these documents:

- Original Vital Statistics Marriage Certificate – original and 1 copy
- Petition for Divorce and Designation of Address for Service
 - originals plus 3 copies if you have children
 - originals plus 2 copies if you have no children
- Copy of any agreement about your marriage or separation, including a Separation Agreement – where available

If there are dependent children:

- Birth Certificates for each dependent child – original and 1 copy
- Proof of current income – for both you and your spouse
- Most recent income tax return and Canada Revenue Agency Notices of Assessment/Reassessment – for both you and your spouse, where available

3. **Arrange service to your spouse.**

To **serve** means to deliver by a third party. You can't serve the documents to your spouse yourself. A Divorce Petition and Designation of Address for Service must be served within 6 months of being filed at the courthouse.

Documents can be served in one of these ways:

Service by Friend or Acquaintance

A **server** is the person who is serving the documents. The server must be 18 years or older. Give the server:

- A stamped copy of the Divorce Petition,
- A stamped copy of the Designation of Address for Service, and
- An Acknowledgement of Service form.

Your spouse keeps the copy of the Petition and the Designation of Address for Service. Your spouse can decide to sign the Acknowledgement of Service or not sign it. If your spouse does not sign the Acknowledgement of Service, the server must complete an Affidavit of Service.

The server gives you:

- The Acknowledgement of Service, completed and signed by your spouse and the server, or
- An Affidavit of Service, completed and signed by the server.

You must file the Acknowledgement of Service or Affidavit of Service with the family court.

If your spouse lives in the United States, contact their county court. Ask for the name and address of people who serve documents. If your spouse lives in another country, contact a person in that country to arrange service for you.

Service by registered mail

Mail a copy of the stamped Divorce Petition and Designation of Address for Service and Acknowledgement of Receipt card by registered mail. Include a self-addressed stamped envelope so your spouse can return the Acknowledgement of Receipt card to you. Canada Post has a website where you can track registered mail and print your proof of service.

Don't use this option if you believe your spouse will not return the Acknowledgement of Receipt card.

Service by a professional Process Server or by a third party

Professional process servers charge a fee. Most professional process servers use their own Affidavit of Service. You can find Process Servers at www.CanadianProcessServing.com, www.UnitedStatesProcessServing.com or by calling 1-800-465-7378.

Note that Sheriff Services on PEI no longer serve divorce papers. Sheriff Services in other provinces may still do so.

Substituted Service

If you don't know your spouse's current address, you may need legal advice. You may have to apply to the court for an order for substituted service or an order to not serve your spouse.

4. If there are children of the marriage and they are under 18 years old, send the Director of Child Protection the letter in your forms and a copy of the stamped Petition for Divorce and Designation of Address for Service.

If you have dependent children, your divorce can't go ahead until you have received a letter from the office of the Director of Child Protection to say they will not intervene in the case. The Director's office will send an original letter to the family court and a copy to you. This usually takes a few weeks. If you receive a letter that says that Child Protection will intervene in the case, talk to a lawyer.

The **date of service** is the date your spouse receives the Petition. After the date of service, you must wait:

- 20 days if your spouse was served on PEI.
- 40 days if your spouse was served elsewhere in Canada or in the United States.
- 60 days if your spouse was served outside of North America.

You must also wait for a Clearance Certificate to arrive from the Federal Government. This can take 4 to 6 weeks.

Second Filing of Documents

1. After the time period has passed and you have received your Clearance Notification, contact the family court. Call 902-368-6000 for Charlottetown. Call 902-888-8125 for Summerside. They will tell you when to bring your forms to the courthouse.

There is a filing fee. Ask the family court what it is.

2. Bring your forms and proof of service to the court.

Note: When you file forms with the courthouse, you will sign and date them in front of a court clerk. The court clerk will keep the originals. They will give you stamped copies once filed.

Document Checklist

Make sure you have these documents:

- Petitioner's Affidavit on Motion for Judgment. This Affidavit is where you make any corrections to the petition.
- Requisition to Note Default and Notice of Motion for Judgment
- Note of Default
- Registrar's Certificate
- Divorce Judgment – original plus 2 copies
- Proof of Service (Affidavit of Service, Acknowledgement of Service, or Acknowledgement of Receipt)

You don't need to bring your Clearance Certificate or letter from Child Protection to the court, but you should keep these documents.



Once a judge signs the Divorce Judgment, a copy will be mailed to both parties. You may file the third filing 31 days after the judge signed the Divorce Judgment.

Third Filing of Documents

1. After the 31-day waiting period, contact the family court. Call 902-368-6000 for Charlottetown. Call 902-888-8125 for Summerside. They will tell you when to bring your forms to the courthouse.

There is a filing fee. Ask the family court what it is.

2. Bring your forms and proof of service to the court.

Note: When you file forms with the courthouse, you will sign and date them in front of a court clerk. The court clerk will keep the originals. They will give you stamped copies once filed.

Document checklist

Make sure you have these documents:

- Requisition for Certificate of Divorce.
- Certificate of Divorce – original plus two copies.
- Petitioner's Affidavit.

You are now divorced.

Keep your Certificate of Divorce with your important papers. Vital Statistics requires this document for a marriage license if you remarry. If you lose your Certificate of Divorce, there is a fee to replace it.