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# SEPARATION and DIVORCE

**Separation** is when a couple, or one of them, has decided that their relationship is over. This could be a married couple or a common-law couple. Married couples, even though separated, are still legally married. You do not need to go to court to separate. Often spouses will have a Separation Agreement prepared. A lawyer should do this. A Separation Agreement would set out what the spouses have agreed to, for example about support, custody, access, property division. You can register a Separation Agreement with the Court and the Maintenance Enforcement Program.

**Divorce** is a legal process that is completed when a Judge gives a Divorce Judgment. The Divorce Judgment states that the marriage is legally over. Only married couples get divorced, common-law partners do not.

**Family Conciliation Services** provides a range of conflict resolution services to families going through separation or divorce. Their staff is made up of skilled counsellors. Services are offered at no cost and are provided either at the request of the court, or directly to family members. For more information, visit: [http://www.gov.mb.ca/fs/childfam/family\\_conciliation.html#top](http://www.gov.mb.ca/fs/childfam/family_conciliation.html#top)

If you are separating or divorcing, you may want to see a lawyer for advice on your rights. Spouses should each see their own lawyers. A lawyer can draw up separation agreements, or can help you with applying to court, if you cannot agree on matters like custody, child support or property division. A lawyer can make sure that you are aware of all of your rights and will explain what you may be entitled to claim. There are many advantages to being represented by a lawyer when applying for a divorce. A lawyer can prepare your forms, file them at the court office and guide you through the legal process.

During a divorce proceeding, you may need to deal with various matters, which can be decided in court, or by agreement, before, or during the time you are in court. These include: child custody and access, child support, division and use of property, spousal support, protection orders, (for example no contact or communication).

If you have unresolved support, property or custody matters, or if your spouse does not agree with the divorce, you should see a lawyer. There are many laws that can affect your situation and they can be complicated. You may be at a disadvantage if you try to represent yourself. If you get a divorce before dealing with certain matters, or without dealing with them completely, you can lose the right to have the court deal with them after the divorce (for example property matters). There may be circumstances or changes to your situation that come up during a simple uncontested divorce that complicate matters.

To get a divorce in any Canadian Court, you must have grounds (legally acceptable reasons) before you can ask the Court to end your marriage. Usually, one of the spouses must be resident in Manitoba for at least one year to file for divorce in Manitoba. The only ground (reason acceptable to the Court) for divorce in Canada is breakdown of the marriage.

Breakdown of a marriage can be proved in one of three ways:

- By showing you and your spouse have lived separate and apart for at least one year before the divorce is granted;
- By showing your spouse committed adultery (if you are the one asking for the divorce);
- By showing your spouse treated you with serious physical or mental cruelty, which would make living together intolerable (if you are the one asking for the divorce).

To be considered living separate and apart (being separated), the spouses must be physically separated and one or both spouses must have the intention to be physically separated. The other spouse must be told that you intend to physically separate.

You may be able to count the time that you were living in the same home as part or all of the year of separation, for example, if both of you have been living your lives separately and you have stopped describing yourselves as a couple. You can try to

reconcile and live together for a period or periods totaling up to 90 days. If you separate again, the 90 days of living together will not interfere with the calculation of the one year separate and apart.

Separation is the easiest and most common way to prove breakdown of a marriage. If you are applying for a divorce on the grounds of living separate and apart for a year, you may be able to get a divorce without an oral hearing, if you prefer. If you are applying for Legal Aid, they will generally only provide a lawyer to represent you, based on separation for one year.

If you claim adultery or cruelty, you do not have to wait for one year to get your Divorce. But, you do have to prove the adultery or cruelty in court. If you file for a divorce using cruelty, you must prove the cruelty took place and that it made it impossible to live with your spouse. Your spouse might dispute this. Proving adultery or cruelty can be complicated and difficult. You will likely have an oral hearing in court in front of a judge. You should see a lawyer. A Judge may not grant a divorce if the Judge finds there has been **condonation**. Condonation means that you have forgiven your spouse. In the case of adultery, if you did not forgive the adultery and separated immediately after, there would be no condonation. The Judge may not grant a divorce if the Judge finds there has been **connivance** (where the spouse who is filing connived to cause the adultery or cruelty). The Court must also be satisfied that there has been no **collusion**. This is when a spouse applying for the divorce makes an agreement, understanding or arrangement to make up evidence or suppress evidence or to deceive the Court. Courts do not take into account whose fault the divorce was, when deciding on spousal support payments. Evidence of adultery is also not relevant when the Court is deciding custody.

The Court must be satisfied that there is no possibility of a reconciliation (living together). The Petition for Divorce contains a statement that says there is no possibility of reconciliation. If you have an oral hearing, the Judge, will ask whether reconciliation is possible.

If there are children of the marriage and you have not worked out support for them, you should see a lawyer. Child support arrangements can be made before the divorce proceeding. Children of the marriage are under 18, or over 18 but unable to support themselves because of illness, disability or some other reason (like school). If both spouses live in Manitoba, the Manitoba child Support Guidelines apply. If one spouse lives outside Manitoba, the Federal Child Support Guidelines apply. Deciding appropriate child support can be complicated. Each spouse's financial information and the details of the child support arrangements should be provided to the court. Provide the following: Financial Statement (Form 70D), the past three years income tax returns, notices of assessment and reassessment and other documents like pay stubs or a letter from an employer. The court needs to know the income of each spouse to make sure the child support is consistent with the child support guidelines or is otherwise reasonable. If this is not the case, the Court will not grant the divorce.

Both spouses can file jointly for divorce, or one spouse can file and the other can answer or not. If no Answer is filed, the divorce would carry on as uncontested. If your spouse files a form called an Answer, then the divorce becomes contested.

The *Uncontested Divorce Guide for Manitoba* is available for \$28 from CLEA (Community Legal Education Association) for spouses who want to get an uncontested divorce and who have settled all other legal matters, without hiring lawyers. The Guide contains some brief explanations of divorce laws that affect Manitobans and step-by-step instructions of how to get an uncontested divorce in Manitoba, and includes an appendix of resources with links to legislation, court addresses, community resources, and information about other sources of legal information.

A divorce takes effect on the 31<sup>st</sup> day after it was granted and is valid throughout Canada. You cannot remarry until the divorce takes effect. You can order (in person or by mail) a Divorce Certificate from the Court of Queen's Bench Registry Office where your divorce was filed, at a cost of \$20.00. You will need to show it, or a certified copy, as proof of your divorce, for example, if you want to remarry or change your name.

If you have claimed corollary relief such as custody, child support, spousal support or property division, you will also receive a Final Order for Corollary Relief, which sets out all of the orders regarding what you claimed for. A Final Order for Corollary Relief can be changed in the future but only when there has been a change in circumstances relevant to the order. You would apply to the court for a Variation Order.

The common law (case law) and the following main Statutes govern separation and divorce in Manitoba:

**Divorce Act** (a federal law) <http://laws-lois.justice.gc.ca/eng/acts/d-3.4/>

**Civil Marriage Act** (a federal law – for non-resident divorces) <http://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html>

**The Court of Queen's Bench Rules, Rule 70 Family Proceedings** (a provincial regulation)

<http://web2.gov.mb.ca/laws/rules/qbr2e.php#r70>

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