

Applying for a Divorce

Family Law Self-Help Guide



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Yukon Government Legal Information Resources

Family Law Information Centre

867-456-6721, or toll free 1-800-661-0408 ext. 6721, www.yukonflic.ca

Court Registry

867-667-5441, or toll-free 1-800-661-0408 ext. 5441

Law Library

867-667-3086, or toll-free 1-800-661-0408 ext. 3086

Maintenance Enforcement Program (Information Line)

867-667-5437, or toll-free 1-800-661-0408 ext. 5437, www.yukonmep.ca

Sheriff's Office

867-667-5365, or toll-free 1-800-661-0408 ext. 5365

Non-Government Legal Information Resources

The Law Line (Yukon Public Legal Education Association – YPLEA)

867-668-5297, or toll free 1-800-668-5297, www.yplea.com

Legal Aid (Yukon Legal Services Society – YLSS)

867-667-5210, or toll free 1-800-661-0408 ext. 5210, www.legalaid.yk.ca

Lawyer Referral Service (Law Society of Yukon)

867-668-4231, www.lawsocietyyukon.com

Family Support Services

Many Rivers Counseling and Support Services

867-667-2970, call collect from outside of Whitehorse, www.manyrivers.yk.ca

Victoria Faulkner Women's Centre

867-667-2693, www.vfwc.net

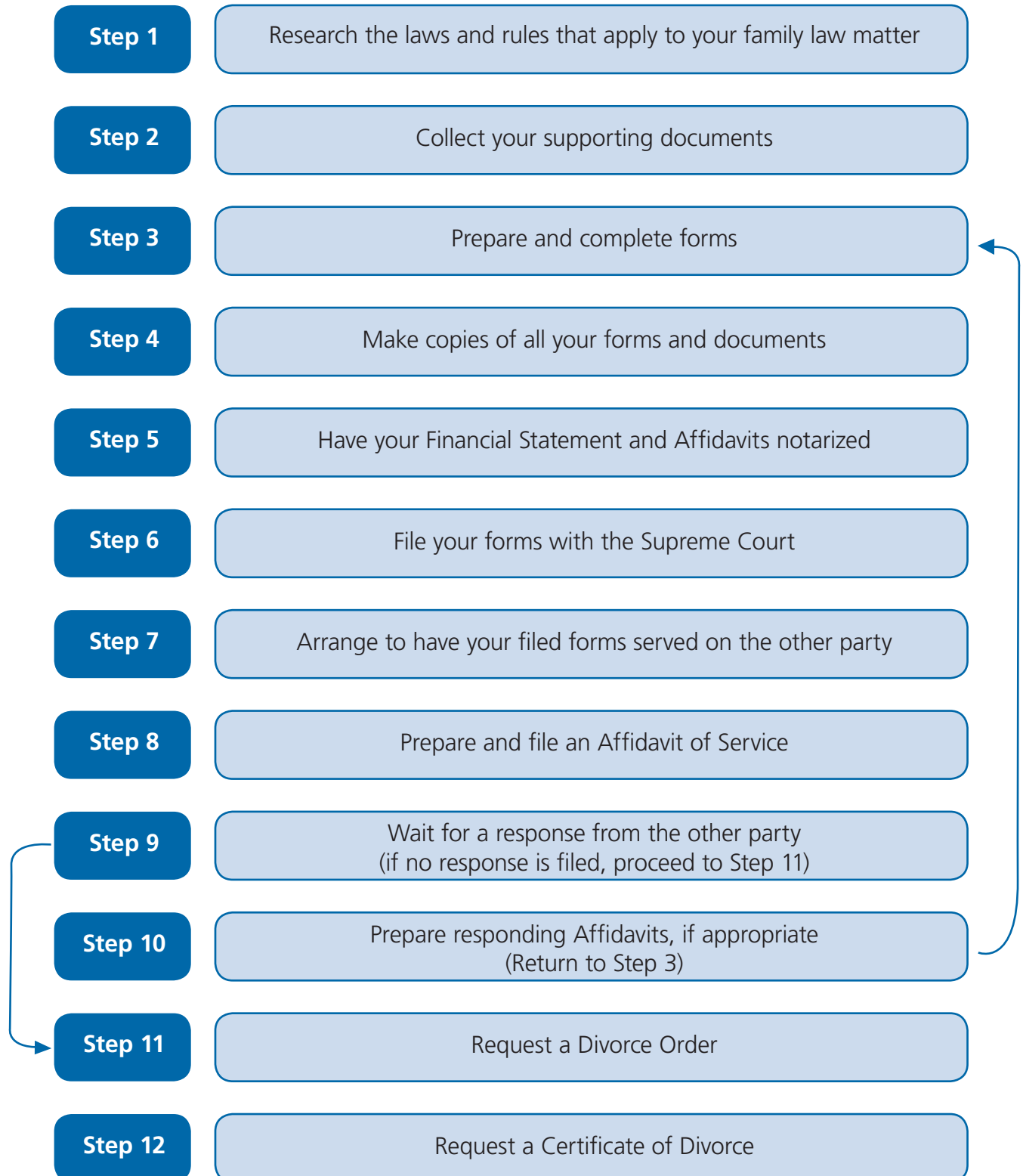
Family Violence Prevention Unit

867-667-3581, or toll free 1-800-661-0408 ext. 3581, www.justice.gov.yk.ca/prog/cor/vs

Kids Help Line

1-800-668-6868

Applying for a Divorce: Step-by-step



IMPORTANT!

This guide has been produced by the Yukon Department of Justice, Court Services Branch, with financial assistance from Justice Canada. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to represent yourself, the first thing that you should do is to consult with a lawyer. A lawyer can give you legal advice and can interpret the law and how it applies to your case. The information provided in this guide is believed to be correct as of its date of publication of March 2012.

At the time of publication, the Yukon *Family Property and Support Act* had not yet been updated to include same-sex relationships. However, in 2004 the Supreme Court of Yukon changed the definition of marriage to mean "the voluntary union for life of two persons to the exclusion of all others" in *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* 2004 YKSC 54. The terms "married" and "common-law" throughout other self-help guides on family law matters refer to either opposite sex or same-sex unions.

At the time of publication of some of the Department of Justice self-help guides in 2009, the *Child and Family Services Act* and the *Children's Law Act*, the successors to the *Children's Act*, had not been proclaimed. Following proclamation, references in these guides to the *Children's Act* can be taken to refer to the new legislation.

Getting a Divorce

The steps in this self-help guide are generally appropriate to help people who are legally married to obtain a Divorce Order through the Supreme Court of Yukon.

Additional self-help guides are available to assist in addressing issues such as child custody, access and support, spousal support and/or division of property and debt.

Other publications produced by the Yukon Department of Justice, Court Services Branch, provide more information on family law that can help you understand your legal issues and court procedures. Additional tools, information and publications on family law and child support can be found on the **Family Law Information Centre** website at www.yukonflic.ca or at the **Family Law Information Centre**, located in the Andrew A. Philipsen Law Centre in Whitehorse.

Basic Information on Divorce

Laws / Legislation

In Canada, divorce and other related legal issues such as spousal support, child support, custody and access for divorcing couples fall under the federal **Divorce Act (Canada)**. Property matters relating to divorce, including division of debt, fall under the **Yukon's Family Property and Support Act**.

Working it Out

Whenever possible, work together to try to come to an agreement before going to court. You may not be able to agree on every issue, and can still go to court to ask a judge to decide about the things you can't agree on. When you have settled as much as you can with the other party outside of court, you are more likely to get an order that will work in the best interests of your changing family.

Child Support

Child support is a child's right and a parent's responsibility under the law. If children are involved in your family law matter, understand the law before you begin. The federal **Child Support Guidelines** came into effect in May 1997 as regulations under the **Divorce Act (Canada)**. The judge will refer to the federal Child Support Guidelines when making a decision about child support.

Getting Organized

It is a very good idea to have a folder so that your forms, documents and papers are kept together as you work through the process. Please type or print and ensure documents are neat and legible. They must be in English or French and must be printed on one side only, on 8½ x 11 inch white or off-white recycled paper. If you are hand-writing the forms, a pen must be used; pencils are not acceptable.

Who Can Apply for a Divorce in Yukon?

Either spouse can apply for a Divorce Order. To apply for a divorce in Yukon, either spouse must have been ordinarily resident in Yukon for at least one year immediately preceding the commencement of the proceeding.

When Should I Apply for a Divorce?

You can apply for a divorce as soon as you are separated. However, if you are claiming breakdown of marriage on the grounds of separation for at least one year, your Divorce Order will not be granted until the year has passed. If you require an order for custody and/or child support, you can apply and receive an order for those matters before the year has passed. You can apply for a Divorce Order once the year has passed.

In summary, it is recommended to apply for a Divorce Order:

- when there is no hope for reconciliation;
- as soon as custody, child support or other orders are required; and
- before the other party moves away from the Yukon.

How Complicated is Filing for Divorce? Can I Represent Myself?

You can represent and file for divorce yourself. The degree of complexity depends on your organizational skills, familiarity with forms and documents, personal circumstances and whether or not your divorce is contested. It may be frightening if you aren't familiar with court procedures, legal documents and forms, or the law. The remedy for this is to read the Rules of Court that apply to divorces and to review the court forms, this booklet and other self-help guides and resources that are available to you. The more you know about the court system and the rules associated with it, the more confident you will feel.

Defining “Uncontested” and “Contested” Divorce

A divorce is **uncontested** when both parties agree to divorce and have agreed to all the terms of the divorce that apply to their situation. It is also considered uncontested if the other party does not respond to the application. **If your divorce is uncontested**, the process is not as complicated as a **contested** proceeding as court hearings are usually not required.

When both parties agree, a separation agreement or consent order can be filed with the court to address the terms of separation including the division of property, spousal support, child custody, access and support. Please refer to the booklet on **Consent Orders** and other publications to assist with preparing and filing **Consent Orders** and Agreements.

If you or the other party **contests** or disagrees with an application for divorce or any of the terms relating to the divorce, please see the booklet on **Opposing an Initial Family Order** in addition to the information contained in this publication.

If your divorce is contested it will be more complicated. Being organized is even more important when the divorce is contested as you will have more paperwork to manage. Unless you come to an agreement you will be required to attend one or several court hearings. The number of hearings that will be held will depend on the complications of the proceeding.

Court Services has published **Representing Yourself: A guide to representing yourself in the Yukon** to help you to prepare for court. You can pick up a copy at the **Family Law Information Centre** or download the guide from the website at www.yukonflic.ca.

Court Services has published a **List of Key Words: Family Law Resource Guide** to help you to understand some of the legal terms you may come across as you represent yourself in a family law matter. You can pick up a copy at the **Family Law Information Centre** or download the guide from the website at www.yukonflic.ca.

How long will it take?

Your divorce will take at least a few months to become final. The amount of time that it takes depends on many things. If the divorce is not contested, and the other party is served soon after the documents were filed with the court, and you file your paperwork as soon as you can at each step, your divorce may become final within four to six months. If your divorce is contested it will take much longer, and depending on the complexity of your divorce, it may take more than one year.

Applying for a Divorce Order: Step-by-step

Step 1: Research the laws and rules that apply to your family matter

Before you begin, you should research the laws and rules that apply to your situation. Read the other publications produced by the Court Services Branch of the Department of Justice, that apply to your family law matter, as well as the Supreme Court of Yukon **Rule 63: Divorce and Family Law and Rule 63A: Financial Disclosure**. (Rules can be found on the Supreme Court of Yukon website at www.yukoncourts.ca.) You should also review the **Family Property and Support Act**, the **Child and Family Services Act**, the **Children's Law Act**, and the **Divorce Act (Canada)**. You should consult a lawyer for legal advice and interpretation of the law that applies to your case.

Contact the **Family Law Information Centre** at 867-456-6721 or toll free in Yukon at 1-800-661-0408 ext. 6721, or visit their website at www.yukonflic.ca for more information and links to publications.

There are different legal rules for married spouses and common-law spouses. For example, common-law spouses who want spousal support must make the request within three months of separating. Rules for the division of property are also different for married and common-law couples. You must research the laws that apply to your situation.

Step 2: Collect your supporting documents

You will need a certificate or a registration of the marriage to file with your application. If you don't have a copy, contact the Vital Statistics Office in the area where you were married to apply for a copy. If you need to make an application to the court before you receive the certificate or registration of marriage, you should do so. If this is the case, complete Part E, paragraph 21(b) or (c) in the **Statement of Claim (Family Law) - Form 91** setting out the reasons for not filing a certificate or registration at the time of commencing your action.

If you are required to submit a **Financial Statement - Form 94**, you need to provide documents to support the income, debt, special expenses and assets you are reporting (see the form for particulars).

You will also need to collect any other documents that you will be submitting as evidence.

Step 3: Prepare and complete forms

To apply for a divorce order, you will need to fill out forms with information specific to your case to submit to the court registry. Supreme Court forms can be found on the Supreme Court website. These are available in Microsoft Word format at www.yukoncourts.ca under the path Supreme Court/Yukon Rules and Forms.

The staff at the **Family Law Information Centre** can help you to complete your Supreme Court forms either over the telephone, by email or on one of the workstations at their office. They cannot provide legal advice or tell you what to write in your court forms, but they can provide guidance for completing the forms and help with using the computer.

Many forms come with instructions throughout the body of the document directing you how to complete them. You should not delete the instructions. If you are removing any content from a form that does not apply to your situation, do not change or reset the numbering or lettering for any other paragraph.

IMPORTANT! When preparing your documents, remember that family law issues are adult problems. Do not involve your children in drafting affidavits or reviewing court documents.

The form you need to file when applying for a divorce order is:

A) Statement of Claim (Family Law) - Form 91

If there are children you may also need:

- B) Financial Statement - Form 94** (if required under Rule 63A)
- C) Notice to File a Financial Statement - Form 95** (if required under Rule 63A)
- D) Agreement as to Annual Income and Amount of Child Support - Form 96** (if applicable)
- E) Child Support Affidavit - Form 98** (if requesting child support)

If there is a claim for a division of property you may need:

- B) Financial Statement - Form 94** (if required under Rule 63A)
- C) Notice to File a Financial Statement - Form 95** (if required under Rule 63A)

If you are making an application for an order prior to the final divorce order, you require additional forms. Refer to the booklet **Applying for an Initial Family Order** for specific information on applications.

Completing your forms:

A) Statement of Claim (Family Law) - Form 91

This form will start your court action, causing a court file to be opened. It also contains basic information about you, the other party and the children (if there are children involved). This form may include a claim for divorce, custody, access, child support, spousal support, division of family assets, and/or other relief. There is a fee to file this form.

B) Financial Statement - Form 94 (if required under Rule 63A)

This form states the income, debt, special expenses and assets for calculating child support, spousal support, and division of property. Additional information for financial disclosure can be found in Rule 63A of the Rules of Court. You may be required to complete this form depending on your circumstances, and the court may order that you file this form even if you are not required to do so under Rule 63A. This form contains very specific instructions; only complete the sections that apply to your situation. Your Financial Statement and supporting documents must be notarized. (See **Step 5: Have your Financial Statement and Affidavits notarized.**) Do not sign your document until you are having it sworn before a Notary Public or other qualified person.

NOTE: Each page of the supporting documents that you are filing with the Financial Statement must be numbered consecutively and attached to the form.

C) Notice to File a Financial Statement - Form 95 (if required under Rule 63A)

If you are entitled to receive a **Financial Statement - Form 94** from the other party under Rule 63A, you must file and serve a **Notice to File a Financial Statement - Form 95** along with your application.

D) Agreement as to Annual Income and Amount of Child Support - Form 96 (if applicable)

If both parties agree on the income of the paying person and the amount of child support, you can complete and file this form. However, if the amount agreed to by the parties is less than the amount defined by the Child Support Guidelines, the Court may order that a different amount be paid.

E) Child Support Affidavit - Form 98 (if children are involved)

If children are involved, complete this form to provide information you want the court to know regarding child support only. Your affidavit and all exhibits must be sworn. (See **Step 5: Have your Financial Statement and Affidavits notarized.**) Do not sign your form until you are having it sworn before a Notary Public or other qualified person.

AN IMPORTANT CAUTION: Be sure that your evidence is complete, accurate, clear and relevant to your application. You must, in all cases, tell the truth. In your affidavit you can only say things that you know personally to be true or things that you believe to be true (and you must give a reason for that belief). There are serious legal consequences for not telling the truth in a sworn document. The other party or other party's lawyer can cross-examine you about anything you include in your affidavit.

NOTE: If you have more than one supporting document (exhibit) to attach to any affidavit, you must place consecutively numbered tabs on the first page of each exhibit. Also, all exhibit pages must be numbered consecutively. For more information on rules for affidavits, see **Rule 49: Affidavits**.

Step 4: Make copies of all your forms and documents

You need four copies of each completed form to submit for filing at the court registry. The original form will always remain on the court file and three filed copies will be returned to you. Keep one copy of each form for your own records, arrange to have someone other than yourself serve one copy on the other party and attach one set to the **Affidavit of Service – Form 7**. You cannot serve the forms on the other party as per Rule 63 (24) of the Rules of Court.

Step 5: Have your Financial Statement and Affidavits notarized

The **Financial Statement - Form 94** and all **Affidavits - Form 59** must be notarized. Take the original and three copies of your forms and supporting documents and proof of identification with you to a Notary Public (or someone else who is allowed to hear an oath, such as a lawyer, justice of the peace or a commissioner of oaths) to have them notarized. Some government staff members are Notaries Public, including those working in the Sheriff's Office, court registry and the Family Law Information Centre..

Step 6: File your forms with the Supreme Court

When you submit your forms to the Supreme Court Registry for filing, the clerk will review them to ensure that you have followed the Rules of Court but will not provide advice or comment on the content of your documents. However, the clerk may advise you to complete missing sections of documents or define unclear information (e.g. date given as 03-04-95 – unclear if the date is March 4th or April 3rd).

When the clerk "files" your forms, a file will be opened and a Supreme Court file number will be assigned to your case. This number will be written on your forms in the upper right-hand corner next to "S.C. No." and will be used to reference your case throughout your court proceeding. This file number must be recorded on all future forms. Your forms will be stamped by the clerk with the date that they were filed. It is important to keep the court informed of any change of address or contact information.

When you submit forms for filing with the court, fees may be required. A list of fees is available online at www.yukoncourts.ca, Supreme Court, as "Appendix C: Fees" on the Yukon Rules and Forms page. You can also contact the **Supreme Court Registry** at (867) 667-5937, toll free 1-800-661-0408 ext. 5937 or the **Family Law Information Centre** at 867-456-6721, toll free 1-800-661-0408 ext. 6721 to find out how much money you will need to pay. If you send your forms by mail, you must include the filing fees or your forms will be returned to you. Do not send cash in the mail. The court registry will accept payment by cash and debit card (these are options only if you come in person to the office in Whitehorse) or by cheque, money order, VISA or MasterCard (available for payments made by mail and in person).

NOTE: When you are filing for a divorce, in addition to the filing fee, you must provide a separate money order or certified cheque in the amount of \$10 which is payable to the **RECEIVER GENERAL FOR CANADA**. This fee is to register your divorce with the **Central Divorce Registry** for Canada; that office will advise the court if another divorce action on your marriage has been registered in Canada. If a divorce proceeding is pending between the spouses, the Divorce Act states "...the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued."

Step 7: Arrange to have your filed forms served on the other party

According to Rule 63, a **Statement of Claim (Family Law) – Form 91** must be served by someone other than the applicant.

If your divorce is contested, you are required to provide the other party with a copy of any form or document that you file with the court. The Sheriff's Office (867-667-5451 or toll free 1-800-661-0408, ext. 5451) may be able to serve your documents for you or may be able to provide you with a list of process servers. There is a fee for this service.

Step 8: Prepare and file an Affidavit of Service

The person who serves your documents must sign and swear an **Affidavit of Service - Form 7** showing proof to the court that the other party was served. Depending on who you choose to serve your documents, you may need to prepare an Affidavit of Service for the server. Once completed, a copy of all forms and/or documents served must be attached as exhibits to the Affidavit of Service and must be sworn in the same way your other affidavits and financial statement were sworn (see **Step 5**). This document must be filed with the court before the divorce can be granted; be sure to make a copy of the completed Affidavit of Service for your records before filing it with the court. You do not have to provide the other party with the Affidavit of Service.

Step 9: Wait for a response from the other party

The other party can oppose your **Statement of Claim (Family Law) - Form 91** by filing an **Appearance – Form 9, Statement of Defence (Family Law) - Form 92** or **Counterclaim (Family Law) – Form 93**. The amount of time that the other party is given to respond is set out in the Statement of Claim form. The time differs depending on where the other party was served. Refer to the form to calculate how much time to allow for a response.

If no Appearance, Statement of Defence (Family Law) or Counterclaim (Family Law) is filed, the family law proceeding can proceed on an uncontested basis. When no response is filed, proceed to Step 11.

Step 10: Prepare responding Affidavits (if applicable)

If you receive responding forms from the other party and you feel that there is more information that you would like the court to know, you can file your own **Affidavit - Form 59**. After you have completed your responding Affidavit, repeat Steps 3-8.

The other party can, in turn, respond to your response. This process can be repeated.

NOTE: It is important to remember that the judge will make his or her decision based upon the evidence. Responding to documents filed with the court is a way to present additional information as evidence, not a means to “argue” with the other party.

The other party must be served with your responding documents. However, it is strongly recommended, even if not required, that you have someone else serve your documents. If you deliver the documents yourself, there may be a greater risk of conflict between you and the other party. Ensure that the person who serves the documents completes the **Affidavit of Service – Form 7**.

Step 11: Request a Divorce Order

NOTE: Proof of service must be filed and the court must have been advised by the Central Divorce Registry that there are no other divorce proceedings pending on your marriage before this step can be taken. (See **Step 6, Central Divorce Registry** information.)

If the divorce is not contested *and* the other party consents to it, there are no fees for this step. You will need to file a **Requisition for Order - Form 3, Affidavit for Divorce Order - Form 97** and a **Divorce Order - Form 100**. The Divorce Order must be a typed document. Contact the **Family Law Information Centre** for assistance in completing these forms.

If you are asking for other “relief” (for example, custody, child support or spousal support, etc.), you may have to file other documents – see **Rule 63** or **Rule 63A** for information relevant to your matter.

If the divorce is not contested and the other party does *not* consent to it, you need to file a **Requisition for Order - Form 3, Affidavit for Divorce Order - Form 97** and a **Divorce Order - Form 100**. There is a fee to file this document.

Note: Under **Rule 63** you must also give the court a stamped envelope addressed to the other party with your return address on it. The court will mail a copy of the filed Divorce Order to the other party in this envelope.

If there are children involved and you need an order for custody, child support or other relief, you may also have to file other documents such as a **Financial Statement – Form 94** or a **Child Support Affidavit – Form 98**.

Information required on Child Support Orders:

Besides other details of your particular case, if your order provides for child support, the Child Support Guidelines state that child support orders must include:

- the names of the people paying and receiving child support;
- the names and birth dates of the children to whom the order relates;
- the income of people whose income is used to determine the amount of the child support;
- the Child Support Guidelines table amount determined for the number of children to whom the order relates;
- the amount determined for a child the age of majority or over;
- the particulars of any special or extraordinary expenses, the child to whom the expense relates, the amount of the expense or, where the expense cannot be determined, the proportion to be paid in relation to the expense; and
- the date on which the lump sum or first payment is payable and the day of the month or other time when subsequent payments are to be made.

Prepare the **Divorce Order – Form 100** (this form must be typed – not hand-written) and take the original and three copies to the court registry. (You may wish to submit more copies so you have additional copies for your files). Once the order is approved and filed, the copies will be returned to you but the original order will always remain on the court file. Sometimes the court requires changes to be made to your draft order before it can be approved. When that happens, you will need to make the changes and submit a new signed original with copies.

Step 12: Request a Certificate of Divorce

This is the final step in your divorce proceeding and is filed after the appeal period has expired (31 days after your divorce was granted). Prepare a **Certificate of Divorce – Form 101** (this form must be typed – not hand-written).

Complete the areas that are underlined with the appropriate information and remove the lines in those areas. The only lines left on the document should be for signatures at the bottom of the page. The date that the divorce “took effect and dissolved the marriage on” is 31 calendar days after the date that the divorce was granted. The date that the divorce was granted is written on the Divorce Order (on the first page, beside the name of the judge).

After you have prepared the **Certificate of Divorce – Form 101** (“Certificate”), take the original and three copies to the court registry. The Certificate will probably be filed while you wait (depending on how busy the court is). Once it is filed, the court will keep the original Certificate and return the copies to you. There is a fee to file this form and if you need “certified copies” there are additional fees for each certified true copy.

Additional Steps

If your matter involves a claim for custody, access or child support, the court requires both parties to take the parenting workshop called For the Sake of the Children. (See **Supreme Court Practice Direction 37** about Parenting after Separation or Divorce on the Supreme Court page, www.yukoncourts.ca.) The requirement does not apply to parents who do not live within 30 km of a community where the workshops are offered, when the parties involved have filed a written agreement settling the issues between them, or when all children are 16 years of age or older. For more information or to register for the For the Sake of the Children workshop, contact the **Family Law Information Centre**.

In all family matters, the court also requires that a **Family Law Case Conference** be held within 60 days of the date of service of the Statement of Claim, except in those cases that are exempt. (See **Rule 63** on the Supreme Court website, Rules and Forms, www.yukoncourts.ca.) Failure to hold a Family Law Case Conference within 60 days may result in an application being struck off the list of court cases or adjourned by the judge. Contact the Trial Coordinator at 867-667-3442 or toll free 1-800-661-0408 ext. 3442, to schedule a Family Law Case Conference. If you live outside of Whitehorse, you can request to attend by telephone or by videoconference.

If you and the other party work out an agreement in the Family Law Case Conference, you can prepare and file a **Family Law Case Conference Order – Form 109**.

NOTES

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Court Services

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www.justice.gov.yk.ca

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