



PUBLIC LEGAL INFORMATION
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UNCONTESTED DIVORCE: AN INFORMATION GUIDE

Newfoundland and Labrador



Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization, dedicated to increasing access to justice by educating the public about the law. The within publication was funded through the Law Foundation of Ontario's "Access to Justice Fund." PLIAN greatly appreciates everyone's contributions to this project.

The Divorce Guide provides readers with general information regarding uncontested divorces and the process for unrepresented litigants applying for an uncontested divorce in Newfoundland and Labrador. This information is not an official source of law and it does not constitute legal advice. Laws are in constant flux and only practicing lawyers can provide legal advice.

Maria Kyriacou
Executive Director (Acting)
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ISBN #: 978-1-894829-77-9



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This guide is **not** a complete statement of the law. It is **not** a substitute for legal advice. Valid in **Newfoundland and Labrador** courts only.

INTRODUCTION

Divorce is a legal procedure. When you are legally married, the only way to end your marriage in law is to get a divorce. In Newfoundland and Labrador, the application for a divorce is made at the Supreme Court.

The purpose of the Divorce Guide is to assist individuals in navigating court processes and procedures for uncontested divorces in Newfoundland and Labrador. This section outlines the applicability of the Divorce Guide. If you are considering divorce, please read this section to determine whether the Divorce Guide is intended for your situation.

YOU CAN USE THIS GUIDE IF:

- You and your spouse have already settled and/or agreed upon all the outstanding issues of your marriage, including: support, custody and division of matrimonial property through written agreement(s) and/or court order(s). Please note that you should seek independent legal advice prior to settling such matters.
- You do not expect your spouse to oppose or challenge (contest) the divorce. This guide can be used for uncontested divorce proceedings for both individual and joint applicants. There is also a section for Respondents.
- This guide only applies to uncontested divorces based on one year's separation.
- You have been separated for at least one year and the marriage has broken down with no hope of reconciliation. You can start the divorce proceedings before the year has passed; however, it cannot be completed until after one year has passed.
- You know where your spouse currently lives and you can arrange to have a third party serve your spouse with the necessary documents.
- You and/or your spouse have lived in Newfoundland and Labrador for at least 12 consecutive months immediately before applying for divorce.

YOU CANNOT USE THIS GUIDE IF:

- You have not settled all of your family law issues such as support, custody and property division.
- You believe that your spouse will contest the divorce, or you are the respondent and you plan to contest the claims made in the originating application.
- You want to file for divorce based on adultery or cruelty. This is a more complicated process and you should hire a lawyer. This guide only applies to uncontested divorces based on one year's separation.
- You do not know the whereabouts of your spouse.
- Neither you nor your spouse has been a resident of Newfoundland and Labrador for at least 12 consecutive months immediately prior to applying for divorce.

Please note that if any of the above-noted listed under “YOU CANNOT USE THIS GUIDE IF” apply to your situation, you should consult a lawyer as soon as possible.

- ⇒ If you and your spouse have settled all outstanding issues, your divorce is called “uncontested,” which means that you will normally not have to attend court for a hearing. However, you will need to ensure that the required paperwork and documentation is filed with the Family Court Registry Office.
- ⇒ To find a listing of lawyers, check the Yellow Pages or call PLIAN’s Lawyer Referral Service. This service provides members of the public with a referral for an initial consultation up to 30 minutes with a lawyer for a small fee. The Lawyer Referral Service operates Monday through Friday, from 9 a.m. to 12 noon. Call (709) 722-2643 or toll-free 1-888-660-7788.
- ⇒ You can also contact the Legal Aid Commission of Newfoundland and Labrador at one of the numbers provided under “Legal Resources” on page 23 of this publication.

FREQUENTLY ASKED QUESTIONS

What are the grounds for divorce?

To apply for a divorce, you must be able to show that there has been a **permanent breakdown of the marriage**. This means that **either**:

- you have lived separate and apart for one year (this includes living under the same roof if you are living as though you are separate and apart), **or**
- your spouse has committed adultery, **or**
- mental or physical cruelty has made it intolerable for the spouses to continue to live together

Please note: You cannot use this guide for a divorce based on adultery or cruelty. You can only use this guide for divorce proceedings based on one year's separation.

Where do I go to obtain a divorce?

You will need to go to the Supreme Court of Newfoundland and Labrador. Depending on where you live, it will either be General Division or Family Division. For a list of contact information for Supreme Courts across Newfoundland and Labrador, see Appendix A (page 21).

Do I need a lawyer?

A lawyer is not necessarily needed to file the court paperwork to seek a divorce if you and your spouse have already settled and/or agreed upon all the outstanding issues in your marriage, including support, custody and division of matrimonial property through written agreement(s) and/or court order(s). However, a lawyer is usually consulted before filing for the divorce to ensure all matters have been settled. A lawyer can help you understand your legal rights and obligations.

Do I need to get a legal separation first?

There is nothing required to make your separation “legal”. Two people who are married to one other, but who are living separate and apart, are considered to be officially separated in the eyes of the law. Many people ask this question, but there is no such thing as a “legal separation” and you do not need an official document to prove that you have separated.

How long do I have to wait before I can file for divorce?

If you are basing your divorce on living separate and apart, the *Divorce Act* states that the period of time you and your spouse must be living apart to qualify for a divorce is one year. You are considered to be legally separated when you no longer live together as spouses. You can start the process of paperwork and file before the year is up, but the divorce judgment cannot be granted by a judge until you have been separated for at least one year.

What happens if we get back together to try to reconcile?

The *Divorce Act* does allow a period of “trial cohabitation”, where spouses resume living together for the purpose of reconciliation. This will not interrupt or end the one-year separation period, provided that the time you reunite is **less than 90 days**, or the combined length of **all** periods of reunion is **less than 90 days**. If you exceed 90 days and still decide to end the marriage, your one year separation period will have to begin all over again before you can start divorce proceedings.

My spouse and I are separated, but we still live under the same roof. Can we still file for divorce?

As long as you have been living separate and apart for one year, you may still file for divorce based on separation. In some cases, spouses live in the same home but are living as though they are separate and apart (e.g. sleeping in separate rooms, not sharing meals, laundry or other household chores and activities). If you are still sharing a residence with your spouse while being separated, it is highly recommended you speak to a lawyer about your situation before starting to do your own divorce.

Am I guaranteed to be granted a divorce by the Court?

Even if there are adequate grounds for a divorce, certain circumstances may prevent the divorce from being granted. The Court may refuse to grant a divorce if spouses have not made reasonable arrangements for the support of any children of the marriage or if either spouse has misled the Court about the grounds of the divorce in order to have the case dealt with more quickly.

My spouse and I have been separated for six years. How long do we wait before the divorce is legal?

Divorce does not automatically happen, no matter how long you have been separated. This is a common misconception. While you do not have to file any paperwork with the Court to be separated, you **DO** need to do so to get divorced. Divorce is legally regulated under the *Divorce Act*; it involves an application process and it must be granted by the Court.

We’ve separated without hopes of reconciliation. Are we legally obligated to divorce or can we just stay separated and resolve our legal issues on our own?

You are not legally obligated to get a divorce after separation. It is your choice whether or not you file for divorce. It may be possible to resolve your legal issues through a Separation Agreement, which can be useful in addressing items such as custody of and access to children, support payments, division of property and debt, along with other issues relevant to the settlement of matters. If a couple is separating on good terms, they may be able to work out many of these issues together. Even if spouses are able to draft their own Separation Agreement, it is strongly recommended that each party seek independent legal advice before signing it. But remember that when you are legally married, the only way to end your marriage in law is to get a divorce.

I've filled out all the necessary forms and submitted them to the Court. Am I officially divorced now?

No, you are not divorced yet. Submitting an Originating Application is just the first step. Just because you've started the divorce proceeding does not mean that you are divorced. You are not divorced until (1) a judge grants your divorce and (2) you have been issued an official Certificate of Divorce. You will NOT be officially divorced until the process is complete.

I married my spouse in another country. Can I apply for divorce in Newfoundland and Labrador?

You divorce in your current province of residence, no matter where you were married. You can apply for a divorce in Newfoundland and Labrador if you were legally married in another province or another country, but either you or your spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before the application for divorce is made.

I'm not a Canadian citizen. Can I apply for divorce in NL?

You do not have to be a Canadian citizen to apply for divorce in Newfoundland and Labrador. However, either you or your spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before making the application for divorce.

My divorce was just finalized. Am I free of all obligations to my ex now?

Although a divorce legally ends a marital relationship and frees the spouses from their obligations to each other under the marriage, under the *Divorce Act* the Court may require one spouse to financially support the other. Divorce also does **not** change the rights and obligations that parents have to children of the marriage. Parents are still obligated to support their children financially. Before you can use this guide, you must first settle all your related family law matters.

My partner and I lived common law for the last 15 years, but now we've separated. Do we need to get a divorce?

If you were never legally married to each other, then divorce doesn't apply to you. No legal formalities are required to end the relationship. It is not a legal marriage and will not become one, no matter how many years you live together. If you are in a common law relationship, separation ends the relationship and you do not need a divorce.

How long will it take to get my Certificate of Divorce?

On average, if everything is straightforward, your divorce should be completed within two to three months from the date the Originating Application for Divorce is served on your spouse.

There are, however, many factors that will affect that time-frame, including:

- Where your spouse is living (it may take longer to serve the legal documents if your spouse lives in another province or country);
- Whether all your documents have been completed properly and filed with the Court on time;
- Whether the Judge believes that he/she has enough information within the filed documents to grant the Divorce Judgment;
- The schedule of the Court; and
- Whether it is necessary to hold a hearing to further clarify, settle, or determine matters.

How much will an uncontested divorce cost?

For a self-represented person in a straightforward, uncontested divorce, the basic cost is \$120.00 (at the time of printing). This includes:

- \$70.00 for filing the Originating Application for Divorce (including \$10.00 fee from the Central Registry of Divorce Proceedings)
- \$30.00 for the Divorce Judgment
- \$20.00 for the Certificate of Divorce

Other costs may include: hiring a lawyer for specific questions or tasks, ordering a certified copy of your marriage certificate, photocopying documents, hiring someone to serve documents, paying fees for a Commissioner of Oaths, etc. If you qualify for Legal Aid, the court filing fees may be waived. **Methods of payment include:** cash, credit card (Visa, Mastercard), debit and cheque (paid to the order of “Registrar of the Supreme Court of NL”).

GLOSSARY

Legal terminology can often be difficult to understand. Below is a glossary with a list of definitions for legal terms you may encounter when preparing for your uncontested divorce.

Affidavit of Applicant:

A statement of facts, given voluntarily, for the purposes of a court action or other legal process. An affidavit must be signed by the petitioner verifying the facts of the petition, and witnessed by a Commissioner of Oaths, Justice of the Peace or Notary Public.

Affidavit Of Service:

A sworn statement certifying that a document has been served on a party.

Appeal:

After a judge has made a decision at a trial or hearing, if either party is not satisfied, they may be entitled to "appeal" the decision to a higher Court. This means asking a higher Court to review the decision. The person seeking to appeal must have proper grounds to appeal. This means there must be a legal reason to appeal (for example, the judge may have made a mistake when applying the law to the case).

Applicant:

A person who makes or starts an application in court. The other spouse is called the respondent. In joint applications, parties are called "co-applicants".

Case Management:

A process that gives parties in a dispute scheduled opportunities to discuss the case in order to streamline proceedings.

Certificate of Divorce:

The final document issued by the Court at the end of a divorce proceeding. Either party may apply for this certificate 30 days after the divorce has been granted. This document states that the divorce is final and means that the parties are free to remarry.

Children of the Marriage:

Children of two spouses who, at the marital time, are under the age of 19 and under their charge OR who remain under their charge at 19 years of age or older but are unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

Co-Applicant:

A spouse who is cooperating with his/her spouse in a joint application for divorce; both parties want the divorce and are applying together.

Common Law Relationship:

Two people are considered to be in a common law relationship when they live together in a conjugal (married-like) relationship without having been legally married.

Default Judgment:

A judgment obtained where the Respondent fails to defend against the Applicant's claim.

Divorce Judgment:

An order from the Court that says that two people are divorced. Normally the divorce becomes effective on the 31st day after the date of the judgment.

Matrimonial Property:

As defined by the *Family Law Act*, matrimonial property includes all property acquired by either or both spouses during the marriage with some exceptions. The exceptions include: gifts, inheritances, trusts, settlements, personal injury awards, personal effects, business assets, property exempted under a marriage contract (sometimes referred to as a 'pre-nuptial agreement' or 'pre-nup') or separation agreement, family heirlooms and property acquired after separation. Other exemptions may apply.

Originating Application:

An application to start a divorce; the commencement of a proceeding in a Court by way of filing the appropriate court form.

Party/Parties:

A person by or against whom a legal action is brought; or the people who make promises to each other in a contract.

Respondent:

A person against whom a claim is made in an application, answer or appeal.

Response:

The formal response to an Originating Application: an answer stating the Respondent's position.

Separation:

In family law cases, where spouses are living separate and apart, and one or both of them has the intention of ending the relationship.

Separation Agreement:

An agreement by two people, who cohabited and have separated, on their respective rights and obligations.

Service:

The formal delivery of a legal document to the required person in accordance with the Rules of Court.

Support:

Monetary assistance that a person provides for his or her dependant(s); for example, child support or spousal support.

THE STEP-BY-STEP PROCESS

Doing your own **uncontested divorce** will involve a very specific process. There are three different processes to follow depending on which scenario applies to you.

INDIVIDUAL APPLICATION - one spouse is applying for divorce

JOINT APPLICATION - both spouses are applying together for divorce

FOR THE RESPONDENT - if your spouse has filed for divorce

Please read on carefully to determine which process you should follow.

INDIVIDUAL APPLICATION

Step 1: Prepare Your Originating Application

GATHER YOUR DOCUMENTS

First, you must gather all necessary documents and certificates that you will need to complete your application for divorce. This includes:

- **Originating Application & Notice to Respondent** (Form 56A.06A): This is the application for divorce; it appears as two documents in one, and serves the purpose of both the Originating Application and the Notice to Respondent. This form can be obtained in person at the Family Court Registry Office and is also available online at <http://www.court.nl.ca/supreme/family/forms.html>. It contains several sections that must be filled out, including details about the marriage and the grounds for seeking a divorce, which, for the purpose of this guide as an uncontested divorce, must be one year's separation.
- **Marriage Certificate:** You must provide your original marriage certificate or original registration of marriage certificate to the Family Court Registry Office, which will place it on file. You can also file a certified copy of such documents. To order certified copies of any of these official certificates, contact the Division of Vital Statistics (see Appendix B for contact details). They will advise you of what fee may apply to receive such a document. If you were married in a different province, you should contact Vital Statistics in that province to request a certified copy of your marriage certificate. If a marriage or registration of marriage certificate is in a language other than English or French, you must provide a certified and accurate translation of that certificate.
- **Separation Agreement:** If you have one, you must file the original agreement or a certified copy of it.
- **Family Court Order(s)**, if existing from any Court or jurisdiction.
- **Any other contract or agreement** involving your marriage or separation.
- **Waiver of Financial Statement and Property Statement:** If a divorce involves a claim for support, normally a financial statement needs to be filed with the Court. As well, if a divorce involves a property claim, usually a property statement needs to be filed with the

Court. However, in a case of an uncontested divorce where such matters have already been settled, a waiver form is required (Form 56A.30A).

It should be noted that if the amount of child support agreed upon is different from the basic table amount set by the Child Support Guidelines, then financial statements (Form 56A.27A) will need to be filed with the Court by the Applicant and Respondent, and served on the other party.

COMPLETE THE ORIGINATING APPLICATION

You must carefully read and fill out each section of the Originating Application and Notice to Respondent (Form 56A.06A). Be sure to use blue or black ink, and print neatly. The Court will not accept them if they are not tidy or legible. Once the application has been filled out, it should not be immediately signed. Your signature must be witnessed by the clerk at the Family Court Registry Office **OR** you can have it sworn and signed before a Commissioner of Oaths or a Justice of the Peace before bringing it to the Court office. Double check that all original certificates are attached, including any orders and agreements involving your marriage, children or separation.

Step 2: File Your Originating Application & Notice to Respondent

File (submit) your Originating Application and Notice to Respondent (along with any accompanying documentation) at the nearest Supreme Court of NL. Depending on where you live in Newfoundland and Labrador, you may be dealing with the Supreme Court's Family Division or its General Division. To find the Court closest to you, visit <http://www.court.nl.ca/supreme/contact.html>.

When you take your Originating Application to the Court office, a clerk may ask you to sign the application in their presence. Your signature must be witnessed by the clerk at the Family Court Registry Office, unless you have already had it sworn and signed before a Commissioner of Oaths or a Justice of the Peace.

The clerk will then assign your case a court file number, stamp the application with a court seal and collect the applicable fees. At the time this guide was printed, the fee for filing an Originating Application for divorce was \$70.00. Methods of payment include: cash, credit card (Visa, MasterCard), debit and cheque (paid to the order of "Registrar of the Supreme Court of NL").

The clerk keeps the original copy of your application, as well as any supporting documents, and will place them in the Court file. Two stamped photocopies will be given to you; one that must be served on the Respondent and one copy for your own records.

WAIT FOR YOUR CLEARANCE CERTIFICATE

A Clearance Certificate proves that there are no other divorce actions pending in another province between you and your spouse. The Central Registry of Divorce Proceedings at the federal Department of Justice is notified and checks its database to see if the same parties have registered any other divorce applications. If the check comes back clear, the Central Registry of Divorce Proceedings will issue a Clearance Certificate to the court.

This part of the process usually takes **8-10 weeks**. Although the Court cannot grant a divorce until the Clearance Certificate has arrived, you can use this waiting period to arrange for the Originating Application and Notice to Respondent (and any accompanying documents) to be served on your spouse.

Step 3: Serve the Documents on the Respondent

Your spouse, the Respondent, must be given notice of your divorce application. Your spouse must be served with one copy of the Originating Application and Notice to Respondent (including any attachments), provided to you by the Family Court Registry Office. A copy of the Response form should also be served on the Respondent at the same time (Form 56A.12A). Some Applicants may wait to receive their Clearance Certificate from the Central Registry of Divorce Proceedings, before having these documents served on their spouse. Others may choose to serve the documents soon after the original documents are filed with the Court.

These documents must be given to the Respondent personally, by someone other than the Applicant. Therefore, you do not serve these legal documents yourself. Instead, you must arrange to have them served by a third party, aged 18 or older. The person who serves these papers (the server) must complete an **Affidavit of Service** to prove to the Court that the Respondent has been given the documents. The Affidavit must be signed by the server in front of a Commissioner of Oaths or a Justice of the Peace. If the server is unable to have it signed before one of these officials, both you and the server can go to the Court and have the Affidavit of Service signed and witnessed before a clerk. Remember, the person who served the documents will be signing the Affidavit of Service, not you.

The Originating Application and Notice to Respondent (including any attachments) must be served within **six (6) months** of the date they are filed with the Court. In some special cases, an application can be made to extend the time needed for service, but normally in a straightforward uncontested divorce, you will be given six months to serve the documents on your spouse. Once served, your spouse (the Respondent) has 30 days to issue a Response to your claim (if he/she lives in Canada or the United States) or 60 days if he/she lives elsewhere.

WAYS TO PROPERLY SERVE YOUR DOCUMENTS (use one method only):

- **Personal Service**

The person serving your documents must be a person who is 18 years of age or older. It can be a friend or acquaintance or even a professional process server. You, the Applicant, are not allowed to serve the documents on your spouse.

If you opt to have the documents delivered by a professional process server, there is normally a fee for this service. For a listing of process servers in Newfoundland and Labrador, contact the provincial Sheriff's Office at (709) 729-4606.

- **Substituted Service**

If you do not know the exact whereabouts of your spouse, it may be impossible to serve him or her directly. Under these circumstances, the Applicant would normally have to apply to the Court for an order to pursue substituted service. This means you could seek to serve the legal documents using a method other than personal service (such as posting a notice in a newspaper or serving the documents on one of the Respondent's family members). It is strongly recommended that you consult with a lawyer if you are unable to locate your spouse so that you can discuss what options may be available to you.

Step 4: File Affidavit of Service with Court

FILE AFFIDAVIT OF SERVICE

As soon as possible after the Originating Application and Notice to Respondent document has been served on the Respondent, you must file the Affidavit of Service (Form 6.14A) with the Family Court Registry Office. You are required to provide the Court with proof that the Originating Application and Notice to Respondent has, indeed, been served.

WAIT FOR YOUR SPOUSE TO RESPOND

Depending on the jurisdiction where your spouse was served, you must wait a certain period of time from the date the Originating Application and Notice to Respondent was served to him/her before proceeding to the next step:

- **30 days** if your spouse was served in Newfoundland and Labrador
- **30 days** if your spouse was served elsewhere in Canada or in the United States
- **60 days** if your spouse was served in a country outside Canada and/or the United States

NO RESPONSE?

In an uncontested divorce, the Respondent normally does not respond. The Court will issue a Notice of Default when the waiting period has passed and your spouse has not responded. Once this has been done, you can move on to the final step in the application process.

In some cases of uncontested divorce, the Respondent may complete a Response (Form 56A.12A) and indicate that he/she does not contest any of the claims made by the Applicant. Even where the Respondent is not contesting the divorce, he/she can complete a Demand for Notice form (Form 56A.13A). The Demand for Notice will require you, the Applicant, to keep the Respondent updated on any progress made with the divorce application process. You will need to ensure the Respondent is served with any further paperwork pertaining to the divorce proceeding.

Step 5: Ask for your Divorce Judgment

After the designated time period has passed and there has been no answer from your spouse, or your spouse has filed a Response stating they do not contest your application, you can complete and submit an **Application for Judgment** (Form 56A.24B). This is essentially a “request” to the Court for a judgment granting the divorce, based on affidavit evidence.

Bring the following documents to the Court Office when asking for your judgment:

- **Notice of Application for Judgment** (Form 56A.24A)
- **Application for Judgment** (Form 56A.24B)
- **Affidavit of Applicant** (Form 56A.24C)
- **Any other affidavits** or supporting materials required
- **Self-addressed envelopes** addressed to the Applicant and Respondent

Remember, if any of these forms need to be witnessed, do not sign them ahead of time, unless you do so before a Commissioner of Oaths or Justice of the Peace. Otherwise, the forms must be signed in the presence of a clerk at the Family Court Registry Office. There is a \$30 fee associated with the filing of the Application for Judgment (and accompanying documentation) at the time of writing this guide. Methods of payment include cash, credit card (Visa, MasterCard), debit and cheque (paid to the order of “Registrar of the Supreme Court of NL”).

WAIT FOR YOUR DIVORCE JUDGMENT

The divorce Judgment is granted by a Supreme Court justice (judge). If your divorce is granted, the Court registrar will mail a copy of the Judgment (Form 56A.46A) to each of the parties. There is a 30-day appeal period, but in the case of a straightforward, uncontested divorce, it is unlikely that the other spouse will appeal the Divorce Judgment.

Step 6: Receive your Certificate of Divorce

A Certificate of Divorce (Form 56A.47A) states that a divorce dissolved the marriage of the parties as of a specific date. It is not issued automatically; it is only sent at the request of either party. Once the request for the certificate is made, court staff will check the file to make sure the required time has passed and that there has been no appeal. If everything is in order, the Certificate will be issued. There is a \$20.00 fee charged by the Court for the Certificate.

This is the final step in the process. Once you receive the certificate, you have proof that **your divorce is official**. Your Certificate of Divorce should be kept in a safe place with your other important papers. If you lose it, there will be a fee to replace it. If you choose to remarry, this Certificate will be required by Vital Statistics as proof of divorce in order to obtain a new marriage license.

JOINT APPLICATION

In Newfoundland and Labrador, spouses can ask a court together for a divorce. This is called a joint application and it is an option available when neither spouse is opposed to the divorce. For the purpose of this guide, one year's separation must be the grounds for the joint divorce application.

By filing a joint application, the spouses ("Co-Applicants") are telling the Court that they both want the divorce and that all outstanding legal matters have been settled (e.g. claims for support, custody, access and division of matrimonial property). In most cases, the joint application process can be simpler and less time consuming. Because the forms are signed and sworn by both Co-Applicants, several steps can be eliminated compared to an individual divorce application. For example, a joint application doesn't need to include the Notice to Respondent form, it does not need to be not served on either of the Co-Applicants and it does not require a Notice of Default to be issued. After the Judgment stage, the appeal period can often be waived if both spouses sign an undertaking not to appeal the Divorce Judgment.

The following are some steps you may need to take when making a joint application.

Step 1: Prepare Your Joint Application

GATHER YOUR DOCUMENTS

First, you must gather all necessary documents and certificates that you will need to complete your application for divorce. This includes:

- **Originating Application** (Form 56A.06A): This is the application for divorce, and can be completed together as a joint application. It is available at the Family Court Registry Office. It is also available online at <http://www.court.nl.ca/supreme/family/forms.html>. It contains several sections that must be filled out, including details about the marriage and the grounds for seeking a divorce, which, for the purpose of this guide, must be one year's separation.
- **Affidavit of Applicant** (Form 56A.24C)
This is a form that both spouses must complete, which states that neither spouse opposes the claims made in the application for divorce. This can be done as one form completed and signed by both parties together, or as two separate copies completed individually.

- **Marriage Certificate:** You must provide your original marriage certificate or original registration of marriage certificate to the Family Court Registry Office. You can also file a certified copy of such documents. To order certified copies of any of these official certificates, contact the Division of Vital Statistics (see Appendix B for contact details). They will advise you of what fee may apply to receive such a document. If you were married in a different province, you should contact Vital Statistics in that province to inquire how to request a certified copy of your marriage certificate. If a marriage or registration of marriage certificate is in a language other than English or French, you must provide a certified and accurate translation of that certificate.
- **Separation Agreement:** If you have one, you must file the original agreement or a certified copy of it.
- **Any Family Court Order(s):** From any Court or jurisdiction.
- **Any other contract or agreement** involving your marriage or separation.
- **Undertaking:** This form is available from the Court clerk. This document is a sworn promise that neither you nor your spouse will appeal the divorce judgment.
- **Waiver of Financial Statement and Property Statement:** If a divorce involves a claim for support, normally a financial statement needs to be filed with the Court. As well, if a divorce involves a property claim, usually a property statement needs to be filed with the Court. However, in a case of an uncontested divorce where such matters have already been settled, a waiver form is required (Form 56A.30A).

It should be noted that if the amount of child support agreed upon is different from the basic table amount set by the Child Support Guidelines, then financial statements (Form 56A.27A) will need to be filed with the Court by the Applicant and Respondent and served on the other party.

COMPLETE THE APPLICATION FORM

Carefully read and complete each section of the Joint Originating Application. Be sure to use blue or black ink, and print neatly. Once the Application and Affidavit of Applicants have been filled out, it should not be immediately signed. Both spouses' signatures must be witnessed by the clerk at the Family Court Registry Office, unless you have already had the documents sworn to and signed in the presence of a Commissioner of Oaths or Justice of the Peace. Double check that you've attached all the original certificates, orders and agreements involving your marriage, children or separation.

Keep in mind that at any time during the application process, either party may change his/her mind and file a Notice of Withdrawal (Form 56A.45A). This is, however, usually not seen in uncontested joint divorces where both spouses want the process to move along quickly and be finalized.

Step 2: File Your Joint Application

At the Court office, staff will take your application form and supporting documents, file them, give your case a court file number and collect any applicable fees. At the time of writing, the fee for a joint divorce application is \$70. Usually, the Co-Applicants split the cost of this fee, but either applicant can make the payment. Methods of payment include cash, credit card (Visa, MasterCard), debit and cheque (paid to the order of “Registrar of the Supreme Court of NL”).

Each of the applicant spouses will then be asked to sign the Joint Originating Application and the copies in the Court clerk’s presence (unless you have already had it sworn and signed before a Commissioner of Oaths or a Justice of the Peace). As part of the process, the clerk will keep the original application form and all original supporting documents for the Court file. Then, the clerk will return two stamped copies to you (one for each spouse). There will be no need to serve a Notice to Respondent, as both spouses are jointly applying for the divorce. A Notice of Default need not be issued, either.

At the time you file your joint application, you may also wish to both file an **Undertaking** (written promise) that neither party will appeal the Court’s Divorce Judgment. This is often done at the beginning of the application process in the interest of speeding things along. By submitting an Undertaking, the Court can waive the 30-day judgment appeal period at the end of the process. You can ask the Court clerk for an Undertaking form when you are at the Court office and both spouses can sign it in the clerk’s presence. Currently, this form can only be obtained in person at the Family Division Court Office.

WAIT FOR YOUR CLEARANCE CERTIFICATE

A Clearance Certificate proves that there are no other divorce actions pending in another province between you and your spouse. The Central Registry of Divorce Proceedings at the federal Department of Justice is notified and checks its database to see if the same parties have registered any other divorce applications. If the check comes up clear, the Central Registry of Divorce Proceedings will issue a Clearance Certificate to the Court.

This part of the process usually takes **8-10 weeks**. The Court cannot grant a divorce until the Clearance Certificate has been filed.

Step 3: Ask for your Divorce Judgment

The Co-Applicants can complete and submit an **Application for Judgment** (Form 56A.24B). This is basically a “request” to the Court for a judgment granting the divorce, based on affidavit evidence.

Bring the following documents to the Court Office when asking for your judgment:

- **Any other affidavits** or supporting materials required
- **Self-addressed** envelopes (addressed to the Co-Applicants)

Remember: if any of these forms need to be witnessed, do not sign them ahead of time, unless you do so before a Commissioner of Oaths or a Justice of the Peace. Otherwise, the forms must be signed in the presence of a clerk at the Family Court Registry Office. At the time of writing this guide, there is a \$30 fee associated with the filing of the Application for Judgment (and accompanying documentation). Methods of payment include cash, credit card (Visa, MasterCard), debit and cheque (paid to the order of “Registrar of the Supreme Court of NL”).

Your file will be sent to a judge to be reviewed. If the judge is satisfied with the documentation, he/she will grant your divorce. Neither spouse will be required to attend Court unless the Court notifies you otherwise. Should the judge need more information in order to make the divorce judgment, the Court office will contact you.

If the judge decides to grant the divorce, the Court will mail each spouse a copy of the Divorce Judgment.

Step 4: Receive your Certificate of Divorce

A Certificate of Divorce (Form 56A.47A) states that a divorce dissolved the marriage of the parties as of the specified date. It is not issued automatically; it is only sent at the request of either party. Once the request for the Certificate is made, Court staff will check the file to make sure the required time has passed and that there has been no appeal. If everything is in order, the certificate will be issued. At the time of writing this guide, a \$20 fee is charged by the Court for the Certificate of Divorce. Methods of payment include cash, credit card (Visa, MasterCard), debit and cheque (paid to the order of “Registrar of the Supreme Court of NL”).

This is the final step in the process. Once you receive the certificate, you will have proof that **your divorce is official**. Your Certificate of Divorce should be kept in a safe place with your other important papers. If you lose it, there will be a fee to replace it. If you choose to remarry, this Certificate will be required by Vital Statistics as proof of divorce in order to obtain a marriage license.

FOR THE RESPONDENT

If your spouse has filed an application for divorce, and you have not made a joint application, you are the Respondent. You usually won't have to appear in Court in an uncontested divorce case. If you do oppose any of the claims in your spouse's application, you cannot use this guide. This guide is for uncontested divorces only. The following section explains what you can expect in an uncontested divorce procedure and helps you understand what your responsibilities are as the Respondent.

Step 1: Receive Notice to Respondent

When you have been served with an Originating Application and Notice to Respondent, it means that your spouse has filed for divorce. A Response form should also be served on you at the same time (Form 56A.12A). If you have not received such a form, then you should contact the Court to request one or download the form online at http://www.court.nl.ca/supreme/family/forms/Form56A_12A.pdf.

After receiving the Notice to Respondent, you have a designated period of time to respond. You have two options if you are not contesting (opposing) the divorce: to respond without opposing or to not respond at all. Both actions will essentially have the same result and should keep the procedure fairly straightforward so that you and your spouse can get your divorce finalized. The next step will explore these options.

Step 2: Respond or Do Not Respond

In an uncontested divorce, it is expected that the Respondent will not challenge the Originating Application. However, in other cases, a Respondent may choose to contest the claims for relief or the facts set out in the Application. In such situations, the Respondent should consult with a lawyer.

If you do not want to contest a divorce, and your spouse has filed the application for divorce, you can choose whether or not to respond to it. Your two options are explained below:

RESPOND WITHOUT OPPOSING

You can respond without opposing the claims made in your spouse's application for divorce. This is done by completing a Response form (Form 56A.12A) and indicating within it that you do not contest any of the claims made by the Applicant. This means that you acknowledge your spouse's application for divorce and do not oppose any of the claims made within it.

DO NOT RESPOND

The second option is to not respond at all. When you are served with the Originating Application and Notice to Respondent, you can simply make no response. By not responding, you show the Court that you do not oppose your spouse's application for divorce and any of the claims made within it.

If you choose not to respond, you do not need to do anything further except wait for the designated response time to expire (30 days in Canada and the United States, 60 days for other countries overseas). The Court will then normally issue a **Notice of Default** (Form 56A.15A). This is simply a form stating that the deadline for responding has expired and you have not filed a response.

STILL WANT TO BE KEPT INFORMED OF THE PROCEEDINGS?

Even where the Respondent is not contesting the divorce, he/she can complete a **Demand for Notice** form (Form 56A.13A) and have it served on the Applicant. The Demand for Notice requires that an Applicant keep a Respondent updated on any progress made with the divorce application process. The Applicant will then need to ensure the Respondent is served with any further paperwork pertaining to the divorce proceeding. The Demand for Notice must be served on the Applicant and filed with the Court (along with an Affidavit of Service) within 30 days of the Respondent's receipt of the Originating Application and Notice to Respondent.

Step 3: Wait for Notification of Divorce Judgment

Next, you will receive notice as to whether or not your divorce has been granted. The judge will make an official judgment on your spouse's application for divorce. If your divorce is granted, the Court registrar will mail you a copy of the Judgment (Form 56A.46A). There will be a 30-day appeal period, if you wish to appeal the judgment. Normally, in an uncontested divorce, this is not seen, as both spouses want the same thing: to finalize the divorce.

Step 4: Ask for Your Certificate of Divorce

A Certificate of Divorce (Form 56A.47A) is not automatically sent to you. You must ask the Court for your official copy. At the time of writing this guide, the fee associated for this document is \$20. Methods of payment include cash, credit card (Visa, Mastercard), debit and cheque (paid to the order of "Registrar of the Supreme Court of NL"). Once you receive this official document, you will have proof that you are legally divorced. Keep your Certificate of Divorce in a safe place; you will need it if you choose to remarry in the future.

CONCLUSION

We hope that this guide was of assistance to you during the process of filing for, or responding to, your uncontested divorce. You will find more useful resources in the following Appendices, including contact numbers, publications and websites on this topic. We also hope that you will complete the enclosed Evaluation Form and send it back to us. Your feedback, suggestions and ideas will help us improve this guide.

APPENDIX A

Court Forms, Resources & Publications

The following links to forms, publications and website resources may be of assistance to you:

COURT FORMS

<http://www.court.nl.ca/supreme/family/forms.html>

*a list of forms for printing at home; also available in person at the Supreme Court of Newfoundland and Labrador

PUBLICATIONS

PLIAN's Family Law Guide for Newfoundlanders and Labradorians

<http://www.publiclegalinfo.com/publications/FLG-Edition2-Eng.pdf>

*this information guide is also available in French, Inuktitut, Innu-Aimun and Mi'kmaw

DIVORCE LAW: Questions and Answers

<http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/divorce/index.html>

*this national publication guide was created by the Department of Justice Canada

WEBSITES

“Divorce & Separation” (provincial resource)

<http://www.court.nl.ca/supreme/family/divorce.html>

“Families Change” (national resource)

<http://www.familieschange.ca/>

Coping with Divorce

http://helpguide.org/mental/coping_divorce_relationship_breakup.htm

Talking to Your Kids

http://www.helpguide.org/mental/children_divorce.htm#top

LEGISLATION

The Divorce Act

<http://laws.justice.gc.ca/en/D-3.4/index.html>

The Family Law Act

<http://assembly.nl.ca/Legislation/sr/statutes/f02.htm>

Supreme Court Rules (Family Law Proceedings)

http://www.assembly.nl.ca/legislation/sr/regulations/RulesSC/Rc86ru56A.htm#56A_32

APPENDIX B

Contact List

Below is a list of contacts that may be helpful to you. Please note, however, that this list is not meant to be exhaustive.

THE COURTS

The Law Courts of Newfoundland and Labrador

Website: *www.court.nl.ca*

Supreme Court, Family Division - St. John's

21 King's Bridge Road

St. John's, NL

A1C 3K4

Tel: 709-729-2258

Fax: 709- 729-0784

Supreme Court, Family Division - Corner Brook

Courthouse

82 Mount Bernard Avenue

P.O. Box 2006

Corner Brook, NL

A2H 6J8

Phone: (709) 637-2227

Fax: (709) 637-8036

Supreme Court, Trial Division (General) - Gander

Law Court Building

98 Airport Boulevard

P.O. Box 2222

Gander, NL

A1V 2N9

Phone: (709) 256-1115

Fax : (709) 256-1120

Supreme Court, Trial Division (General) - Grand Bank

T. Alex Hickman Courthouse

P.O. Box 910

Grand Bank, NL

A0E 1W0

Phone: (709) 832-1720

Fax: (709) 832-2755

Supreme Court, Trial Division (General) - Grand Falls- Windsor

The Law Courts
55 Cromer Avenue
Grand Falls, NL
A2A 1W9
Phone: (709) 292-4260
Fax: (709) 292-4224

Supreme Court, Trial Division (General) - Happy Valley - Goose Bay

Courthouse
214 Hamilton River Road
P.O. Box 1139, Station B
Happy Valley-Goose Bay, NL
A0P 1E0
Phone: (709) 896-7891
Fax: (709) 896-9212

LEGAL RESOURCES

Public Legal Information Association of Newfoundland and Labrador

Suite 227, 31 Peet Street
St. John's, NL A1B 3W8
www.publiclegalinfo.com

Note: PLIAN does not provide legal advice. It does, however, operate a Lawyer Referral Service (LRS), which provides members of the public with referrals for an initial consult with a lawyer for up to 30 minutes at a reduced rate of \$40 plus taxes. After the consultation, the fees to be charged are strictly between the lawyer and the client. The lawyer is not obliged to accept the applicant's case and the applicant is under no obligation to retain the lawyer.

Tel: 709-722-2643
Toll-free: 1-888-660-7788
Fax: 709-722-0054
E-mail: info@publiclegalinfo.com
LRS Hours: 9 a.m. – 12 noon, Monday to Friday

Newfoundland and Labrador Legal Aid Commission

St. John's Tel: 709-753-7860
Carbonear Tel: 709-596-7835
Clarenville Tel: 709-466-7138
Corner Brook Tel: 709-639-9226
Gander Tel: 709-256-3991
Grand Falls-Windsor Tel: 709-489-9081
Happy Valley- Goose Bay Tel: 709-896-5323
Labrador West Tel: 709-282-3425
Marystown Tel: 709-279-3068
Stephenville Tel: 709-643-5200
Website: <http://www.justice.gov.nl.ca/just/legalassist/legalaid.html>

Canadian Legal Information Institute (CanLII)

www.canlii.org

CanLII is a free comprehensive Canadian database which provides judgments (cases) and statutes from across Canada. The site is managed by the Canadian Federation of Law Societies.

GOVERNMENT AGENCIES

The following list of contacts can be used for obtaining Marriage Certificates and Birth Certificates locally and across Canada.

Newfoundland & Labrador

Division of Vital Statistics

Department of Government Services

PO Box 8700

St. John's, NL A1B 4J6

Tel: 1-709-729-3308 or 1-709-729-3311

Website: *http://www.gs.gov.nl.ca/department/branches/divisions/vs.html*

E-mail: *vstats@gov.nl.ca*

Alberta

Vital Statistics Division

Alberta Registries

Box 2023

3rd Floor, 10365-97th Street

Edmonton, AB T5J 4W7

Tel: 1-780-427-7013

Website: *http://servicealberta.gov.ab.ca/VitalStatistics.cfm*

E-mail: *vs@gov.ab.ca*

British Columbia

Vital Statistics Agency

Box 9657

STN PROV GOVT

Victoria, BC V8W 9P3

Tel: 1-250-952-2681

Website: *http://www.vs.gov.bc.ca/*

Manitoba

Vital Statistics Agency

254 Portage Avenue, Main Floor

Winnipeg, MB R3C 0B6

Tel: 1-204-945-3701

Website: *http://vitalstats.gov.mb.ca/*

E-mail: *vitalstats@gov.mb.ca*

New Brunswick

Vital Statistics
670 King Street, PO Box 6000
Fredericton, NB E3B 5H1
Tel: 1-506-453-2385
Website: <http://www.snb.ca/e/1000/1000-01/e/index-e.asp>

Nova Scotia

Service Nova Scotia and Municipal Relations
Vital Statistics
PO Box 157
Halifax, NS B3J 2M9
Tel: 1-902-424-4381
Website: <http://www.gov.ns.ca/snsmr/access/vitalstats.asp>
E-mail: vstat@gov.ns.ca

Ontario

Office of the Registrar General
Service Ontario
PO Box 4600, 189 Red River Road
Thunder Bay, ON P7B 6L8
Tel: 1-416-325-8305
Website: www.serviceontario.ca

Prince Edward Island

Vital Statistics
126 Douses Road
Montague, PE C0A 1R0
Tel: 1-902-838-0880
Website: <http://www.gov.pe.ca/health/index.php3?number=1020357&lang=E>

Saskatchewan

Director of Vital Statistics
1942 Hamilton Street
Regina, SK S4P 3V7
Tel: 1-306-787-3251
Website: <http://www.isc.ca/VitalStats/Pages/default.aspx>
E-mail: ask@isc.ca

Northwest Territories

Vital Statistics
Department of Health and Social Services
Bag #9
Inuvik, NWT X0E 0T0
Tel: 1-867-777-7400

Nunavut

Bag #3, Health and Social Services
Rankin Inlet, NU X0C 0G0
Tel: 1-867-645-5002
Website: <http://www.gov.nu.ca/english/forms/>

Yukon

Vital Statistics
PO Box 2703
Whitehorse, YK Y1A 2C6
Tel: 1-867-667-5207
Website : <http://www.hss.gov.yk.ca/vitalstats.php>
E-mail : Vital.Statistics@gov.yk.ca

Quebec

Directeur de l'état civil
2535, boulevard Laurier
Québec, QC G1V 5C5
Tel: 1-418-644-4545
Website: <http://www.etatcivil.gouv.qc.ca/en/default.html>
E-mail: etatcivil@dec.gouv.qc.ca

EVALUATION: FEEDBACK SURVEY FOR “UNCONTESTED DIVORCE: AN INFORMATION GUIDE”

Your feedback on this guide is important to us. It was developed to help individuals independently apply to the Court for an uncontested divorce in Newfoundland and Labrador. How did we do? Your opinion matters!

1. How did you find the format of the guide?

Easy to Use _____ Difficult to Use _____ Could be Improved _____

Comments: _____

2. How would you rate the information in this guide?

Clear _____ Somewhat Clear _____ Difficult to Understand _____

Comments: _____

3. Were you able to use the guide to help you through the process of filing for an uncontested divorce?

Yes _____ No _____

4. Did you ask anybody for help using the guide?

Yes _____ No _____

5. If yes, who helped you?

6. We'd like to hear your ideas, opinions, comments and suggestions for improvement of this guide. Is there anything else you'd like to share?

Thank you very much for your feedback!

Please forward your answers to us by e-mailing info@publiclegalinfo.com, or by mailing to Suite 227, 31 Peet Street, St. John's, NL, A1B 3W8