

Affidavit for Divorce Guide

If you have started a case asking for a divorce (and other relief) or just asked for a divorce, you will need (at the appropriate time) to file an Affidavit for Divorce with the court in order to get your Divorce Order. Rule 36 of the *Family Law Rules* governs what must be filed and the contents of what is filed. Form 36 is the correct form for your divorce affidavit. But many requests for a Divorce Order are rejected by judges reviewing the affidavit evidence because the affidavit filed doesn't comply with Rule 36. That will cause you delay and further expense.

This guide may assist in answering some of the more common questions or problems which have resulted in a request for a Divorce Order being rejected but it is not a substitute for legal advice. If in doubt, please obtain legal advice or speak to someone at your local Family Law information Center. The most common errors are identified below.

Paragraph 3

You must confirm that the information in your Application is correct. If you fail to answer this OR if the judge reviewing your affidavit and your Application notices that the information in each is inconsistent, your request will be rejected.

If there are no corrections or omissions, write “**NONE**”.

If there are corrections or changes, this is where you tell the judge what they are. Sometimes the date of marriage in the Application and your affidavit are inconsistent with each other or with your proof of marriage (see Paragraph 4 below). Or the given names in the title of the proceedings (that is, on page 1 of your Application where you identify who is the Applicant and who is the Respondent) are inconsistent with your proof of marriage. An example may be where the Applicant is identified as “John Smith” but the proof of marriage information identifies “John David Smith”: the full given names of the parties as appear in your proof of marriage document must be corrected here (and shown in paragraph 1 of your proposed Divorce Order). Depending on whether a spouse has adopted the other spouse's surname, it is only the given names (not the birth surname) that needs to be corrected. **Therefore, to avoid your request for a Divorce being rejected by a judge you should ensure that the names of the spouses as appear in that document are correctly spelled when you identify them so that the names in your Application and the marriage**

document are consistent- this may avoid your request for the Divorce Order being rejected by the judge.

(Additional Note: If you were divorced before this marriage, you had to indicate under **Family History** in your Application, the place and date of that divorce. If you did not do that, you should include that information here, particularly if that divorce was granted outside of Ontario. Some judges may insist upon seeing proof of the prior Divorce Order or Judgment, so if you should have a copy of that document, it would be a good idea to file it with your divorce affidavit).

Paragraph 4

You must provide to the court satisfactory evidence that you were validly married by answering any of the three statements in the Form that apply to you:

- (a) If you were married in Ontario, you must file a Certificate or Registration of your Marriage issued by the Registrar of Ontario. If you do not have one you can apply by submitting completed applications to:

Regular Mail:

Service Ontario
189 Red River Road, P.O. Box 4600
Thunder Bay, Ontario P7B

Fax:

1-807-343-7459

In Person:

Service Ontario
47 Sheppard Avenue East, unit 417, 4th Floor
Toronto, ON, M2N 5N1

Service Ontario
110 Laurier Avenue West, 1st Floor
Ottawa, ON, K1P 1J1

Online:

https://www.orgforms.gov.on.ca/eForms/start.do?lang=en&_ga=2.203924953.874682042.1609953348-2077042431.1545681741

A Record of Solemnization of Marriage does not comply with the Rule;

- (b) If you were married outside of Ontario, please provide the details of that marriage here. It is a good idea to attach as an exhibit to your affidavit a copy of the document from which you obtained the information. If the document is in a language other than English or French, it must be translated by an accredited interpreter and that translation must be accompanied by an affidavit from the translator and contain sufficient information to satisfy the judge that the translator is qualified;
- (c) If you cannot obtain documentary proof of your marriage, you need to input whatever information you have about your marriage here. The most common reason why there is no documentary evidence is that the marriage was performed in a country where there is, or has been, armed conflict and local or government institutions affected. Please note that it is not acceptable to use this subparagraph if the marriage took place in Ontario (see (a) above).

(Note: If you were divorced before this marriage, you had to indicate under **Family History** in your Application, the place and date of that divorce.

Paragraph 5

The separation date must be the same as the date in your Application.

If you are claiming a divorce based on adultery or cruelty, you must say so here and provide the court with sufficient information to satisfy the judge that a divorce should be granted.

Paragraphs 7 and 8

Follow the instructions above paragraph 7. Read each paragraph carefully before deciding whether to strike it out or, in the case of paragraph 8, what paragraph numbers from a consent, settlement, separation agreement or previous court Order to include. Please note:

- (a) Be sure that your draft, proposed Divorce Order follows the wording of the paragraph or term of the document that you wish to have included with (where appropriate) a word or words modification for intelligibility purposes. For example, there may be a paragraph, say in Minutes of Settlement, that refers to another paragraph (i.e. “The support shall be paid in accordance with paragraph 3 of these Minutes...”: this could be modified to “The support shall be paid in accordance with paragraph 3 of this Order...”);
- (b) Do not ask to have included terms not reflected in the documents shown above;
- (c) Do not include paragraphs or terms containing Releases from (for example) a separation agreement. The court will not allow these terms to be included and your request will be rejected.

Paragraph 11

Section 11(1)(b) of the *Divorce Act* says this,

11(1) In a divorce proceeding, it is the duty of the court
(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made.

This means that you must satisfy the judge reading your affidavit that reasonable child support arrangements compliant with the *Child Support Guidelines* (“the *Guidelines*”) have been made. If those arrangements were made over a year before you swore your affidavit, then unless there is an automatic annual adjustment paragraph in any document between you and the other parent (and that change is disclosed to the court), the judge may insist that both parents’ most recent Notices of Assessment be filed, so you may wish to attach those to your affidavit. Please note that a joint custody or joint parenting arrangement, even if there is a 50/50 residency schedule, does not relieve you from satisfying the court that you and the other parent have complied with S. 11(1)(b) of the *Divorce Act* **even if both of you agree**. The court’s duty is clear - no divorce can be granted until

there is satisfactory evidence in your affidavit that there are child support arrangements in place that are reasonable and comply with the *Guidelines*.

Paragraph 12

If you are claiming costs, ensure that you included that claim in your Application, including the amount you were claiming.

Conclusion

This guide does not try to anticipate every question or potential problem that could arise when you complete and file your affidavit or to predict what a judge may order. There could be other reasons why your request would be rejected but if you read Form 36 carefully and provide, or answer, the information required there should be no reason why your Divorce Order won't be granted.

Effective January 18, 2021