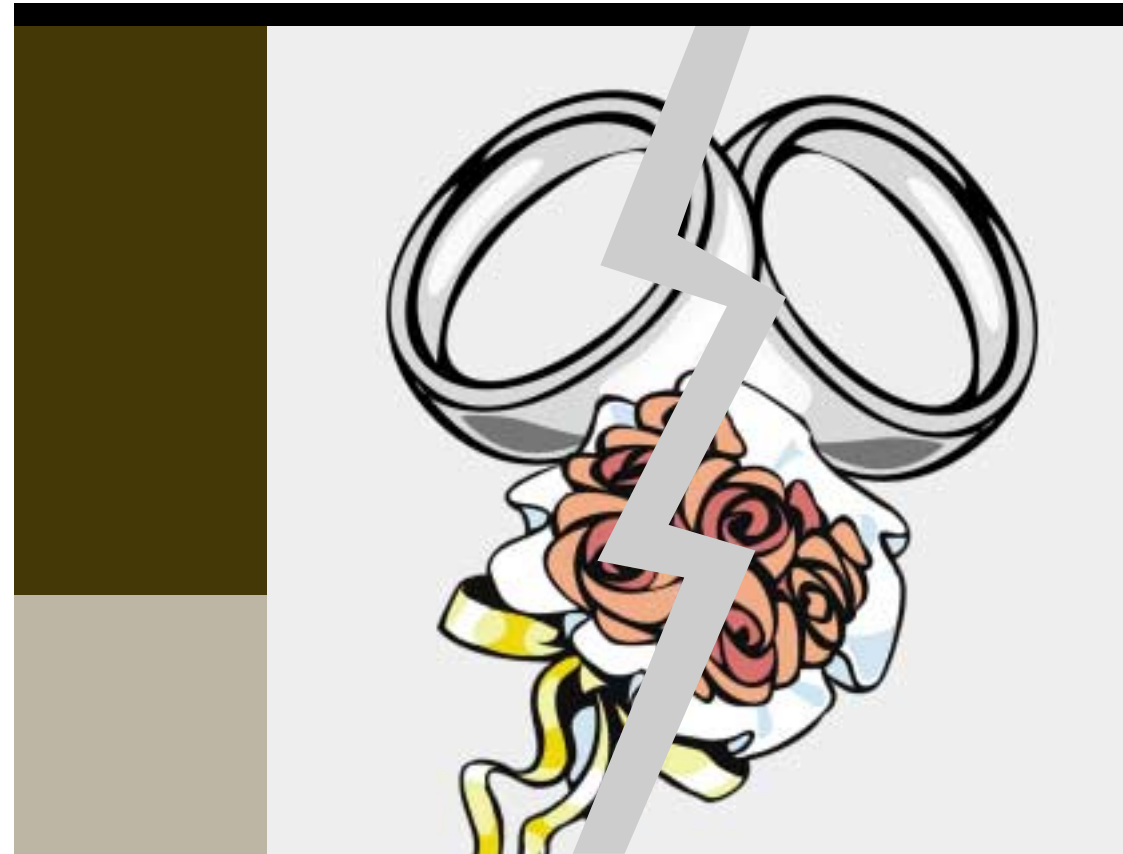


# 怎樣申請離婚

## HOW TO APPLY FOR A DIVORCE



此小冊子只作一般參考用途，  
並不可視為法律或法庭常規的詳盡  
及具有權威性的說明。

This publication is for general reference only and  
should not be treated as a complete and authoritative  
statement of law or court practice.

## 怎樣申請離婚

### 怎樣辦理離婚？

假如是單方面提出離婚呈請，呈請人須填妥一份「離婚呈請書」，親自送交家事法庭登記處，地址為香港灣仔港灣道12號灣仔政府大樓閣樓二。

假如雙方同意共同向法院提出離婚申請，雙方應填寫一份「共同申請書」，並親自送交上述地點。

### 結婚後多久才可申請離婚？

除非得到法院批准，否則要在結婚最少1年後才可提出離婚呈請。

### 是否必須說明提出離婚的原因？

呈請人必須證明他 / 她有理由（或根據）認定婚姻已到終結，即法庭所指的「婚姻已破裂至無法挽救」。

法庭會接受下列其中一項或多項理由為證明：

- 配偶曾與人通姦，而呈請人認為無法忍受與他 / 她共同生活。
- 配偶的行為令人無法合理期望呈請人可與他 / 她共同生活。

- 在提出離婚呈請前，呈請人與配偶已分開居住最少連續1年，而其配偶也同意離婚。
- 在提出離婚呈請前，呈請人與配偶已分開居住最少連續2年。（在這種情況下，無須配偶同意離婚。）
- 在提出離婚呈請前，呈請人已遭配偶遺棄最少連續一年。

就共同申請而言，申請雙方必須向法院證明 (a) 在申請離婚前，雙方已分開居住最少連續1年；或 (b) 在申請離婚前不少於1年，已向法庭呈交一份經雙方簽署的同意書 (表格2E) 而該通知書其後並未被撤回。

倘若家庭中有年齡未滿18歲之子女，則離婚呈請書中必須包括子女撫養權及探視權安排的建議。此外，如果打算申請附屬濟助，例如申請贍養費、物業業權轉移、婚姻資產分配等，亦應在離婚呈請書中提出。

## 是否需要聘請律師？

離婚呈請書或共同申請書一經呈交，有關法律程序便已展開。在提出呈請或申請前，可先諮詢律師的意見，這樣會對呈請人 / 申請人有幫助。

在下列情況下，呈請人 / 申請人會特別需要律師協助：

- 配偶不同意離婚
- 雙方不能就子女或財務安排達成協議

在尋求法律意見時，可考慮利用法律援助署提供的法律援助計劃 (查詢電話：2537 7677)，亦可自行延聘律師。有關詳情請參閱「怎樣申請民事訴訟的法律援助」單張。該單張可在各法院大樓、法律援助署辦事處及各區民政事務處諮詢服務中心索取。香港律師會每年都會出版一本「香港律師行指南」，當中載有處理婚姻訴訟案件的律師行名單。如欲參考該指南，可到各區民政事務處諮詢服務中心、公共圖書館及香港律師會辦事處查閱。

進行離婚訴訟人士請注意，雖然家事法庭登記處的職員會盡可能在離婚程序上予以協助，不過他們並非律師，不能提供法律意見。

當值律師服務的免費法律諮詢計劃會在民政事務處為市民提供初步的法律意見，包括婚姻法例。

## 可否尋求家事調解？

家事調解是為正在分居及辦理離婚的夫婦而設，旨在協助他們解決問題，讓他們可以就有關日後子女和財務上的安排，達成雙方均可接受的協議。

有關人士可自行決定是否尋求家事調解。在調解過程中，受過專門訓練而且中立的調解員，會在保密的情況下，協助雙方有效地溝通，並就有爭議的事宜進行協商。如有疑問，你可向調解統籌主任辦事處查詢。

**地址：**香港灣仔港灣道12號灣仔政府大樓一樓111-116室

**電話：**2180 8063或2180 8065

**傳真：**2180 8052

## 需要填寫哪些表格？

### 單方提出的離婚呈請

提出離婚呈請時，呈請人需要填寫：

表格2 離婚呈請書

表格2B 關於子女安排的陳述書（如適用）

表格3 訴訟程序通知書

表格4 文件送達認收書（只需填寫案件編號和雙方姓名）

### 雙方提出的共同申請

雙方共同申請離婚時需要填寫的表格：

表格2C 共同申請書

表格2D 關於子女安排的陳述書（如適用）

有關表格可向家事法庭登記處索取，以中文或英文填寫均可。填妥各項有關表格後，連同結婚證明書正本或其核證副本，一併送交家事法庭登記處，存檔費用為港幣630元。登記處會將案件編號。以後如有文件需存檔，均須在文件上註明該編號。

## 怎樣將離婚呈請書送達配偶？

離婚呈請書一經提交法律程序便已展開，提出呈請一方為「呈請人」，而配偶為「答辯人」。提交呈請書後，呈請人必須以面交或郵寄方式，將一份經蓋印的副本，送達訴訟中其他當事人。**必須注意的是，呈請人不得親自把呈請書送達答辯人。**呈請人必須透過第三者或以郵寄方式把呈請書送達答辯人。（假如是共同申請，便無須安排將申請書送達對方。）

## 提交呈請書或共同申請書後應怎辦？

呈請人 / 申請人應前往家事法庭登記處索取申請表，向司法常務官申請指示，把案件排期審訊。法庭會將該呈請或申請編入下列其中一個案件表內排期聆訊：

案件表	費用
特別程序案件表	\$630
抗辯案件表	\$1,045

若屬離婚呈請，必須經司法常務官確定呈請書已經送達答辯人後，案件才可排期聆訊。以下兩種情況均可證明呈請書已經送達答辯人：（一）答辯人已將填妥的表格4交回法庭。（二）送件人向法庭提交誓章，聲明已將呈請書送達答辯人。若屬共同申請，只要有關文件已齊備，案件便可排期聆訊。

司法常務官就審訊日期、地點及時間發出指示後，將會通知訴訟各方出席。

## 然後怎樣？

### 特別程序案件表

如呈請人已提交離婚呈請書，**但答辯人沒有提交答辯書予法庭存檔**，該離婚呈請便會被列入特別程序案件表。共同申請的案件，亦會列入此案件表。

司法常務官發出審訊指示後，會考慮呈請人提交的證據。若司法常務官信納呈請人 / 申請人已就呈請書或申請書的內容提出足夠證據，便會發出一份證明文件，然後存檔。有關雙方亦會收到一份副本，列明雙方已同意的條款。

訴訟雙方無須出席有關聆訊，法庭會頒布暫准判令，解除雙方婚姻關係。

### 抗辯案件表

如呈請人提交離婚呈請書後，**答辯人將其答辯書提交法庭存檔**，案件則會列入有抗辯案件表處理。就這些案件而言，法庭將會頒布暫准判令，解除婚姻關係。但若證據不足，法庭則會駁回有關呈請。倘若法庭批予離婚判令，但家庭子女的撫養權或探視權問題仍須待法庭處理，又或任何一方申請附屬濟助，則法庭可將此等事宜押後至另日在內庭處理，並同時指令社會福利署提交報告。在認為適當時，法庭還可指令雙方提交經濟能力誓章，送交法庭存檔。

## 何時才可取得最後判令？

在法庭頒布暫准判令6星期後，有關人士可將填妥的「申請將暫准判令轉為絕對判令通知書」交回法庭，申請將暫准判令轉為絕對判令。如屬離婚呈請，應填寫表格5，屬共同申請則應填寫表格5A。

如有婚生子女，即使其年齡已逾18歲，但仍在接受全時間教育的，法庭也有責任考慮他們的福利安排。因此，除非法庭滿意對子女所作的有關福利安排，否則暫准命令不能轉為絕對命令。

若司法常務官信納一切已符合法例規定時，便會向雙方發出一份絕對判令證明書。

## 訴訟雙方可否查閱其離婚案件的法庭記錄？

離婚訴訟中的任何一方，均可於家事法庭登記處查閱其案件的法庭記錄，查閱費用為港幣18元。

## 服務承諾

	輪候時間
i) 解除婚姻關係 - 由排期審訊至實際聆訊	
- 特別程序案件表	50日
- 有抗辯案件表 (聆訊為期1天)	110日
ii) 財務申請 - 由傳票存檔至聆訊 (聆訊為期1天)	110-140日

- 有關公眾人士的來信，司法機構會盡可能立即回覆。無論怎樣，我們會於收到信件後10天內作出簡覆，然後於30天內作出詳盡回覆。
- 為了使服務更完善，我們歡迎各方提出意見及建議，來信可寄至香港金鐘道38號高等法院司法機構政務長收。

## 如何聯絡我們?

### 家事法庭登記處

地址：香港灣仔港灣道12號灣仔政府大樓閣樓二

電話：2840 1218

傳真：2523 9170

### 會計部

地址：香港灣仔港灣道12號灣仔政府大樓閣樓二

電話：2582 5381

傳真：2523 9170

## 辦公時間

### 家事法庭登記處及會計部

星期一至五	上午九時至下午一時 下午二時至下午五時
星期六	上午九時至中午十二時

- 當發出八號風球或黑色暴雨警告信號時，家事法庭將會休庭，登記處及會計部將停止辦公。
- 若有關警告信號於上午六時前取消，法庭將恢復聆訊，登記處及會計部亦會照常辦公。
- 若有關警告信號於上午六時至十一時取消，法庭、登記處及會計部將於是日下午二時三十分恢復聆訊及辦公。
- 若有關警告信號於上午十一時後才取消，法庭、登記處及會計部是日將全日休庭及停止辦公。
- 若你的案件聆訊因颱風或暴雨警告而受到影響，請留意電台及電視台有關法庭、登記處及會計部重新開放的報導，或致電家事法庭登記處查詢。

司法機構  
二〇〇七年三月  
(第六版)

## HOW TO APPLY FOR A DIVORCE

### How do I get a divorce?

If you are petitioning for divorce on your own account, fill in a petition form and take it personally to the Family Court Registry, M2, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong.

If you and your spouse have agreed to jointly apply to the court, you should together fill in a joint application form and submit it as above.

### How soon after marriage can I petition for divorce?

Unless the court allows otherwise, you can start a petition for divorce only if you have been married for at least 1 year.

### Must I explain why I want a divorce?

You must be able to prove that you have reasons (or “grounds”) for saying that the marriage is at an end. The term the court uses is “the marriage has irretrievably broken down”.

The court will accept one or more of the following grounds as proof:

- that your spouse has committed adultery and that you find it intolerable to live with him / her

- that your spouse has behaved in such a way that you cannot be reasonably expected to live with him / her
- that you and your spouse have lived apart for a continuous period of at least 1 year before filing the petition and that he / she agrees to a divorce
- that you and your spouse have lived apart for a continuous period of at least 2 years before filing the petition (in such a case your spouse’s consent to a divorce is not required)
- that your spouse has deserted you for a continuous period of at least 1 year before filing the petition

In the case of a joint application, you and your spouse must prove to the court (a) that you have lived apart from each other for a continuous period of at least 1 year before making the application; or (b) that not less than 1 year prior to the making of the application a notice (Form 2E) signed by each of such parties was given to the court and that the notice was not subsequently withdrawn.

If there are children of the family who are under the age of 18, you must include in your petition your proposal as to their custody and access. If you wish to apply for ancillary relief such as maintenance, transfer of property, division of matrimonial assets, etc., you should also pray so in your petition.

## Will I need a lawyer?

Submitting a petition or joint application for divorce puts legal proceedings in motion, so you will find it helpful to seek legal advice before any submission is made.

You will particularly need a lawyer in the following circumstances:

- your spouse does not agree to a divorce
- neither of you can agree on the arrangements to be made for the children or on financial matters

In seeking legal advice, you may wish to take advantage of the Legal Aid Scheme administered by the Legal Aid Department (Tel: 2537 7677) or alternatively choose your own solicitor. For details, please refer to the “How to apply Legal Aid in Civil Cases” leaflet which is available at all Courts, Legal Aid Department office and Public Enquiry Service Centres in District Offices. Each year, the Law Society of Hong Kong publishes a Directory of Hong Kong Law Firms, which includes a list of firms handling matrimonial cases. This directory can be consulted in Public Enquiry Service Centres in District Offices, public libraries and at the office of the Law Society of Hong Kong.

Please note that while the staff of the Family Court Registry will seek to give you every assistance relating to divorce procedures, they are not lawyers and they are not permitted to offer legal advice.

The Duty Lawyer Service's free Legal Advice Scheme provides members of the public with preliminary legal advice including matrimonial law in District Offices.

## Can I seek family mediation?

Family mediation is a problem-solving process designed to help couples who are divorcing or separating reach their own mutually acceptable agreements about ongoing arrangements for their children and / or how to resolve financial matters.

It is a voluntary process in which a specially trained, impartial third person, the mediator, seeks to help both sides to communicate effectively and to negotiate issues in dispute, all in a completely confidential setting. You can contact the Mediation Co-ordinator's Office for enquires.

**Address:** Room 111-116, 1/F, Wanchai Tower, 12 Harbour Road,  
Wanchai, Hong Kong

**Telephone:** 2180 8063 or 2180 8065

**Facsimile:** 2180 8052

## What forms do I have to fill in?

### Petition for divorce

To start a petition, you need to fill in:

Form 2 Petition

Form 2B Statement as to the arrangements for children (if applicable)

Form 3 Notice of Proceedings

Form 4 Acknowledgement of Service (case number and name of parties only)

## Joint Application

In the case of a joint application, you need to fill in:

Form 2C Joint application

Form 2D Statement as to the arrangements for children (if applicable)

All forms you need are available from the Family Court Registry and may be completed in English or Chinese. When you have filled them in, take them to the Family Court Registry for filing, together with your original marriage certificate or a certified true copy. The filing fee is \$630. You will be given a case number, which must be marked on any subsequently filed documents.

## How will my petition be served on my spouse?

Now that legal proceedings have started, you are known as the “petitioner” and your spouse is known as the “respondent”. After filing your petition, you must arrange for a sealed copy of it to be served on every other party to the proceedings, either by hand or by post.

**Note that you must not serve the petition yourself on the respondent.** Instead you must use the services of a third person or send the petition by post. (In the case of joint applications, there is no need to arrange for service on the other party.)

## What should I do after filing a petition or joint application?

You should next apply to the Registrar for directions to set down the case for trial, using an application form obtainable from the Family Court Registry. Your petition or application will be set down for hearing in one of the following lists:

List	Fee
Special procedure list	\$630
Defended list	\$1,045

Where a petition is concerned, before the case can be set down the Registrar must be satisfied that the petition has been served on the respondent. This can be proved either by showing that respondent has completed and returned to the Registrar a Form 4, or by having the person who served the documents on the respondent file an affirmation to that effect. Joint applications will be set down provided that the relevant documents are in order.

The Registrar will make directions on the date, place and time of trial and will notify you and the other parties.

## What happens next?

### Special Procedure List

If you have petitioned for divorce but the **respondent does not file an answer**, the petition will be set down in the Special Procedure List. Joint applications also come under the Special Procedure List.

After the Registrar has given directions for trial, he will consider the evidence you have filed. If he is satisfied that you have proved the contents of the petition or application, he will make and file a certificate to that effect. Both parties will receive a copy, endorsed with the terms they have agreed.

There is no need for either party to attend the hearing. The court will grant a decree nisi dissolving the marriage.

### Defended List

Where the petition for divorce is made and the **respondent has filed an answer**, the cause will be set down in the Defended List. In such cases, the court will either grant a decree nisi dissolving the marriage or will dismiss the petition if insufficient evidence is found. In the event of court granting the decree of divorce, if there are children of the family whose question of custody and access need to be dealt with by the court, or if there are applications for ancillary relief by either party, the court will adjourn these matters to Chambers with directions for social investigations report and filing of affidavit of means by the parties where appropriate.

## When will my divorce become final?

Six weeks after the court has granted a decree nisi, you can apply for your decree to be made absolute by sending to the court a completed “Notice of Application for Decree Nisi to be made Absolute”, using Form 5 (for a petition) or Form 5A (for a joint application).

If there are children of the marriage, the court has a duty to consider the arrangements for their welfare, even if the children are over 18 but are still receiving full-time education. The decree nisi will not be made absolute until the court is satisfied with the arrangements for them.

The Registrar will issue a Certificate of Decree Absolute to each party if he is satisfied that the statutory requirements have been complied with.

## Can I see the court records of my case?

Either party can inspect the court records of their case at the Registry on payment of the prescribed fee of \$18.

## Performance Pledge

	<b>Waiting Time</b>
i) Dissolution of marriage – from setting down for trial to actual hearing	
– Special Procedure List	50 days
– Defended List (1-day hearing)	110 days
ii) Financial applications – from filing of summons to hearing (1-day hearing)	110-140 days

- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will issue an interim reply within 10 days and a full response within 30 days of receiving such correspondence.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

## How to contact us?

### Family Court Registry

Address: M2, Wanchai Law Courts, Wanchai Tower,  
12 Harbour Road, Hong Kong

Telephone: 2840 1218

Facsimile: 2523 9170

### Accounts Office

Address: M2, Wanchai Law Courts, Wanchai Tower,  
12 Harbour Road, Hong Kong

Telephone: 2582 5381

Facsimile: 2523 9170

## Business Hours

### Family Court Registry and Accounts Office

Monday to Friday 9:00 a.m. to 1:00 p.m.

2:00 p.m. to 5:00 p.m.

Saturday 9:00 a.m. to 12:00 noon

- Proceedings in the Family Court will be adjourned and the Registry and Accounts Office will close when tropical cyclone signal No. 8 or a black rainstorm warning is issued.
- Proceedings will resume and the offices will open as usual in the morning if such signal or warning is cancelled before 6:00 a.m.
- Proceedings will resume and the offices will open at 2:30 p.m. if such signal or warning is cancelled between 6:00 a.m. and 11:00 a.m.
- Proceedings will remain adjourned and offices will remain closed for the whole day if such signal or warning is cancelled after 11:00 a.m.
- If the hearing of your case is affected as the result of a tropical cyclone or rainstorm, please listen to radio and television announcements about re-opening times, or call the Family Court Registry for enquiries.

Judiciary  
March 2007  
(6th Edition)