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A 2015 Alberta Guide to the Law

# DIVORCE



Student Legal Services  
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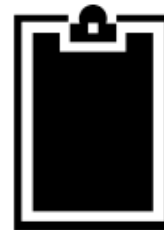
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# Getting a Divorce

## *The Divorce Act*



# 3



### **Choose your province**

To get a divorce in AB you must have been ordinarily resident here for 1 year

### **Choose a ground for divorce**

There are 3 grounds for divorce in AB: separation for 1+ year, adultery, or cruelty

### **Start with a Statement of Claim for Divorce**

File this document at the Courthouse and have it served on your spouse



### **Receive your Divorce Judgment**

Once it is approved, the Justice will sign the Divorce Judgment and send it back to you

### **File the remaining documents**

Depending on your spouse's response you will need to file more paperwork that will be looked over by a Justice

### **Wait for a response**

Your spouse has 20 days (if they are in AB) to respond to your claim



**Wait 31 days**

**Get your Divorce Certificate**

## DIVORCE

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# DIVORCE

## I AM THINKING OF GETTING A DIVORCE, WHAT'S FIRST?

If you and your spouse decide to separate, there is no need to start divorce proceedings right away. Because divorce changes your rights and responsibilities as they relate to your spouse, you should consider the matter seriously and speak to someone who may be able to go over your options with you, for example a professional counsellor, a lawyer, or an employee with Family Justice Services.



Couples often choose to remain separated for a period of time before they start the divorce process. Time apart may give the two of you a chance to work out some of your concerns.

Choosing to separate without getting a divorce right away does not mean that you cannot deal with child support/custody, property, or spousal support right away. It is possible to get *interim orders* which can be used during the period of time between when you separate and when you choose whether to divorce or to get back together (reconcile).

## CAN I GET A DIVORCE?

If you do choose to get a divorce then you will follow the process from the *Divorce Act* which is the federal law that deals with how divorces can occur throughout Canada. In the *Divorce Act* there is only one official reason for a divorce: marriage breakdown. According to this statute, there are 3 ways that marriage breakdown can happen:

1. Separation;
2. Adultery; or
3. Cruelty.

### 1. Separation

You and your spouse must have lived **separate and apart** for at least one year prior to a Divorce Judgment. The divorce action may be started before the one-year period has ended which means that you can file all your paperwork and forms during that year, but must still wait the full year before the divorce judgment will be granted. This is the final document that finalizes your divorce and would allow for you to re-marry etc.



In many cases, during a separation spouses will live in two different places however, this is not required. Due to financial or other family circumstances, spouses may decide to reside in the same home during the year of separation.

Under certain circumstances, it is possible to live separate and apart even though both spouses live under the same roof. This can happen if:

- a. Spouses sleep in separate bedrooms;
- b. There is little or no communication between the spouses;
- c. Spouses do not have sexual relations with each other;
- d. Spouses do not perform domestic services (i.e. cooking or cleaning) for each other unless there is a contract for those services;
- e. Spouses eat their meals separately; and/or

f. Spouses do not share any social or recreational activities.

It should be noted that this list is not complete because every separation is different but the idea is that you are living as roommates rather than as a family.

## Reconciliation

A spouse who is seeking a divorce based on a one-year separation may reconcile (get back together) with his or her spouse without disrupting the one year time period as long as they are back together for **no longer than 90 days**.



If there is reconciliation between spouses that is longer than ninety days, the one-year separation period will be interrupted and the spouses will no longer have grounds for divorce. If this occurs, the separation period will have to begin again, and the spouses will have to wait another twelve months from the date of their last separation before applying for a divorce.

## 2. Adultery

The law defines adultery as an event when either spouse has cheated by engaging in acts of an intimate nature with someone else during the marriage. Only the spouse who did not commit adultery can file for divorce if you are choosing to use this as your reason for the divorce.

A spouse cannot use his or her own adultery as grounds for a divorce. This means that you cannot say that you cheated and argue that this should allow you to get a divorce.

If you choose to use adultery, rather than separation for 1+ year(s) as your grounds for divorce it must be proven in the Court of Queens Bench to a Justice. Normally, it will be very difficult, expensive and time-consuming for the spouse filing for divorce to prove the other spouse's adultery in court, unless the adulterer is willing to admit to their infidelity in a sworn court document.



If you are the one using adultery as the reason you are getting a divorce, you do not have to wait a year before starting or completing the divorce proceedings. However, the Justice may decide not to grant the divorce if you have either encouraged or forgiven your spouse's adultery. For example if the adultery occurred a number of years ago and since then you have gotten back together as a couple. Generally, Courts will say that the adultery must be your reason for getting a divorce.

## 3. Cruelty

The third ground for divorce is if there is cruelty. This includes either physical or mental cruelty. Cruelty only needs to happen once before a spouse may ask a Justice for a divorce. However, in order to qualify as a reason for divorce, the law says that the other spouse's cruelty must be so severe that it makes living together intolerable.

Examples of mental cruelty include a spouse consistently coming home drunk, constant verbal abuse, or excessive drug use. Only the spouse complaining of the cruelty can file for divorce. Like adultery, cruelty must be proven, and it is normally very difficult to do so.

If you are using cruelty as the reason you are getting a divorce, you do not have to wait a year before starting or completing the divorce proceedings.



It is highly recommended that anyone who is filing for divorce on the grounds of either cruelty or adultery consult with a lawyer before starting divorce proceedings. These grounds are difficult, time consuming and expensive to prove, it is often better to start the divorce proceedings (such as filing all of the required paperwork) and then just wait the full year of separation to get your final divorce judgment.

## WHAT ARE THE STEPS IN A DIVORCE?

1. A divorce is started with a document called a “Statement of Claim for Divorce”. If you are the person starting the divorce, you will be the Plaintiff and your spouse will be the Defendant. If your spouse is starting the divorce action, he or she is the Plaintiff and you are the Defendant. You can also use a similar document which is called a “Statement of Claim for Divorce and Division of Matrimonial Property”. This second type will deal with property division at the same time – but it is not required.
  - a. You can get these documents online at the Alberta Courts website ([albertacourts.ca](http://albertacourts.ca)) or at the Family Law Information Centre on the provincial court side of the Courthouse.
2. Once the Statement of Claim for Divorce is completed, it must be signed and taken to the Courthouse. You should have three copies of all of your forms whenever you go to the Courthouse: one copy for yourself, one for the other party, and the original copy for the Court.
3. Once the Statement of Claim for Divorce is filed at the Courthouse, it must be “served” on the Defendant (your spouse). This means that it must be personally delivered to the Defendant. Please note that the Statement of Claim MUST be delivered to the Defendant by someone OTHER than you. This can be a friend, family member, or a professional process server that you can hire to serve documents for you. If it will be too difficult, or impossible, to serve the Defendant personally, you can ask the Court for an Order for Substitutional Service which will allow you to serve them in a different way. As well, if the Defendant lives outside of Canada, you will need to ask the Court for an Order to serve them outside of Canada.
4. After service of the Statement of Claim, the Defendant has 20 days (1 month if he or she is out of province but still in Canada, and 2 months if outside of Canada) to dispute the Statement of Claim. If the Defendant does not file a dispute (Statement of Defence), then you can go on with the other forms. If you are using one year of separation as your grounds for divorce, make sure that one year has passed before moving on to this step. If the Defendant does not respond within the appropriate time period the Plaintiff may file a Sworn Affidavit of Service, Noting in Default, Request for Divorce, Affidavit of Applicant, and a proposed Divorce Judgment. Your affidavit should include:
  - a. Your original Marriage Certificate;
  - b. A copy of any orders or agreements pertaining to your divorce, and
  - c. A copy of any previous Certificates of Divorce, if applicable.



Note: If you do not have your Marriage Certificate, you can order it from the Department of Vital Statistics. In Edmonton and area, call [780] 427-7013.

If you have children you should also include Child Support Data Sheets, a Parenting After Separation Certificate or Exemption Form, and a Divorce Judgment that includes arrangements for the children.

5. The Clerk will then give the divorce file to a Justice to look at. Once the Justice is satisfied with the documents and evidence presented, he or she will sign the Divorce Judgment. The Judgment will then be returned to the Clerk, who will mail one copy each to the Plaintiff and the Defendant at the addresses given in the Request for Divorce. This process usually takes 4-6 weeks.
6. Thirty-one days after the Divorce Judgment has been signed, it becomes final and the parties can make a request for a Certificate of Divorce from the Courthouse, which is the final document of the divorce action. This is an important document for both the plaintiff and defendant to keep because it proves that they are no longer married. You will also need this certificate if you want to re-marry.

Other steps may be needed if the defendant lives outside of Canada, if the defendant cannot be located, or if the plaintiff is asking for maintenance (support) or other costs.

### WHAT ARE SOME REASONS WHY A JUSTICE MAY NOT LET YOU GET A DIVORCE?

There are situations where a Justice may not let you get a divorce, these include:

1. Spouses who intentionally mislead the Court will not be allowed to divorce.  
An example would be two spouses agreeing to state that they have been separated for one year when in fact they have only been separated for one month.



2. You and your spouse have children that you have not worked out an arrangement for.

The Justice must be satisfied that reasonable arrangements have been made to take care of and support the children financially after the divorce. What is reasonable will depend on each couple's circumstances, but the Justice will decide if the arrangements that have been made are fair.

You must ensure that these issues are dealt with before going to Court for a divorce application or else you may have to go back again after having dealt with any issues that were found.

### WHAT ABOUT OUR PROPERTY?

It is possible for a couple to be granted a Divorce Judgment before they have dealt with the division of matrimonial property. This includes all of the property that they have acquired during their married life. However, most of the time, matrimonial property will be divided between the spouses during the divorce proceedings, either through an agreement or by following a Court Order. If the property is divided by an agreement between the spouses, each spouse must have had independent legal advice before entering into that agreement. If the property is divided by a Court Order, Alberta's *Matrimonial Property Act* will govern the terms of the Order.



Property division can be **very complicated** and it is recommended that you speak with a lawyer about all of your options. For more information, see the Student Legal Services pamphlet "Division of Property: Married Couples".



## CAN I GET A DIVORCE IN ALBERTA?

Under the *Divorce Act*, one spouse must be “ordinarily resident” in Alberta. This means you must have lived in Alberta for one year immediately before the divorce action is begun. If you have children, it is usually best to file your divorce action in the province where your children live.

## DOES IT MATTER WHERE I WAS MARRIED?

You may be able to get divorced in Alberta no matter where you were married. If you were married outside of Canada, the Court will need some proof that the marriage was valid according to the law of that country. If this applies to you, you will need a marriage certificate and an affidavit proving the marriage was in solemn form (valid). If you were married in a Canadian province other than AB, a marriage certificate issued by the government of the province where you married would be sufficient proof of an out-of-province marriage. Please remember that you must still meet the “ordinarily resident” requirement (lived in Alberta for one year before your divorce action) no matter where you were married.



## WHAT IF I CANNOT FIND MY SPOUSE?

You must make all reasonable efforts to locate your spouse, such as calling relatives, mutual friends, or their last known workplace, as well as checking the telephone directory, Internet, Facebook and so on. If you absolutely cannot find your spouse, then you may be allowed to apply to a Justice of the Court of Queen’s Bench of Alberta for an ‘Order for Substitutional Service’. This order will give you the ability to notify your spouse that you have filed for divorce by some alternative method. It would be best to discuss your options with a lawyer.

## HOW LONG WILL IT TAKE?



The length of time from start to finish for a divorce action depends upon how quickly you (or your lawyer) finish the paperwork, how easy it is to locate and serve the documents on your spouse, and how many complications there are in the case. An uncontested divorce will generally take between 6 months to a year. A contested divorce could take several years.

## THE WAITING PERIOD

Several things might happen during the thirty-one day waiting period between the date of the Divorce Judgment and the date that an application for the Certificate of Divorce can be made:

1. You and your spouse might reconcile. If so you should apply to set aside the Divorce Judgment. You would then once again be considered married to each other.
2. One spouse might appeal the Divorce Judgment. If so, no Certificate of Divorce can be issued.  
**NOTE:** An appeal cannot be started after the Certificate of Divorce has been issued.
3. An application might be made by anyone to set aside the Divorce Judgment because it was obtained as a result of fraud. This application would have to be finished before a Certificate of Divorce could be issued.

The thirty-one day waiting period may be waived if there are special circumstances that make it in the public interest to grant the divorce earlier. An example of special circumstances would be one spouse

wanting to remarry within a short period of time due to the impending birth of a child or death of a family member.

Normally, none of these occur, and the Certificate of Divorce is granted 31 days after the Divorce Judgment, on application to the Clerk of the Court.

### WHAT IF I HAVE CHILDREN?



There must be arrangements made for children under 18 whenever you are going through a divorce proceeding. These are known as corollary relief Orders.

Corollary relief Orders are Orders dealing with spousal support, child support, child custody and access. Corollary relief Orders can be made for a limited time (called an 'Interim Order') or they can be made as a final Order. They can be made after separation but before divorce or during the divorce process.

**Note:** if there are children, a Justice must see that there have been arrangements made for their support before granting a divorce judgment.

### The Parenting After Separation Seminar

If you and your spouse have children under the age of 16, you **MUST** attend the *Parenting After Separation Seminar* before making any application to the court dealing with your children, or before applying for a Divorce Judgment. After completing the course, parents will receive a certificate of completion that will be filed with the courts.

The *Parenting After Separation Seminar* is led by a legal professional and a mental health professional and is a **FREE** 6 hour seminar. If you are in this situation, the phone number to register is (780) 413-9805. You can also register to take this course online at the Alberta Courts website.

### Focus On Communication In Separation (FOCIS) Course



The *Focus on Communication in Separation (FOCIS) Course* is another **FREE** 6-hour course, however it is not mandatory. It is designed for separated or divorced parents of young children who are experiencing high levels of conflict. The purpose of the FOCIS Course is to teach parents how to communicate in order to parent their children effectively after separation or divorce.

The FOCIS Course is not mandatory, but it is strongly recommended for parents who are having problems communicating. For more information, contact Alberta Justice Family Mediation Services at 780-427-8329. In Edmonton, call [780] 644-5092 to register for the FOCIS course.



### WHERE CAN I GET HELP OR MORE INFORMATION?

#### Legal Resources

Legal Aid Society of Alberta ..... [780] 427-7575  
..... [www.legalaid.ab.ca](http://www.legalaid.ab.ca)

Those who qualify for legal aid can get a lawyer to represent them for a reduced fee. Contact

the legal aid office to determine whether or not you would be eligible for a lawyer.

- Lawyer Referral Service..... 1-800-661-1095  
Phone number that gets you in touch with 3 lawyers who specialize in the area of law that you are interested in. Generally the lawyers will provide a 30 minute consultation over the phone.
- Family Law Information Centre (FLIC)..... [780] 415-0404  
Clerks who work out of the Edmonton Courthouse and can provide you with help filling out forms and understanding the Court process.
- Student Legal Services Family Law Office ..... [780] 492-8244  
Law students who are able to provide you with information and referrals. SLS also offers a Do-Your-Own-Divorce Clinic as an easy method of getting a divorce for those going through simple, uncontested divorces without property or spousal support concerns.
- Family Justice Services ..... [780] 427-8329  
Staff work with those who qualify at little to no cost and help them understand the Court process. They cannot give advice but may be able to help you understand and go through simple court applications.
- Queen's Bench Divorce Clerks ..... [780] 422-2425  
Clerks that may be able to help you understand and fill out the forms for a simple, uncontested divorce.
- Alberta Justice Family Mediation Services ..... [780] 427-8329  
Trained mediators may be able to work with you and your spouse to come to an agreement regarding some of the family law issues you are dealing with.

### **Safety Resources**

- Family Violence Prevention Centre..... [780] 423-1635  
Service offered at the Edmonton John Howard Society that provides outreach programs, furniture and victim assistance for those who are or have experienced family violence.
- Family Violence Info Line..... [780] 310-1818  
Phone line available 24 hours a day to connect families with trained staff in many different languages.

### **Resources for Divorces with Children Involved**

- Parenting After Separation Seminar ..... [780] 413-9805  
[www.albertacourts.ab.ca/go.aspx?tabid=547](http://www.albertacourts.ab.ca/go.aspx?tabid=547)  
Free, 6 hour seminar offering information to parents about the separation and divorce process, the effects of separation and divorce on children, techniques for communication and legal information. Mandatory for those going through a divorce with children under the age of 16.
- Focus on Communication in Separation (FOCIS) Course ..... [780] 644-5092  
Free, 6 hour seminar for parents dealing with high stress/high conflict separation and divorces.

Maintenance Enforcement Program ..... [780] 422-5555  
www.justice.gov.ab.ca/mep  
Government program that helps parents collect child support payments and ensures that they are paid on time and in full every month. Either parent can register with the program to have their monthly payments overlooked.

## **Marriage Counselling Resources**

Catholic Social Services ..... [780] 432-1137  
..... or 424-3545 or 471-1122  
www.catholicsocialservices.ab.ca  
Counselling available to people of all faiths and cultures.

Alberta Family Mediation Society ..... 1-877-233-0143  
www.jfsc.org  
Helps to achieve resolution in situations of family conflict through the use of mediation by qualified professionals.

Canadian Mental Health Association ..... [780] 414-6300  
Edmonton and area division offers drop-in counselling, support groups, social recreation, housing, workshops and more to help with mental health issues and education for the community.

Community Counselling Centre ..... [780] 482-3711  
www.pastcoun.com  
Offers individual, couple, and family counselling and therapy services.

The Family Centre ..... [780] 423-2831  
Services include community based family therapy, drop-in single session counselling, healthy relationships counselling, interpretation and translation for a number of languages, as well as the Parenting After Separation Seminar.