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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **GETTING MARRIED**

**version: 2007**

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**WHAT IS MARRIAGE?**

If you are engaged to be married you are no doubt anticipating exciting personal changes in your life. As well, there are a number of legal changes that take effect upon marriage. This pamphlet gives you some general information on areas of the law in Alberta that are relevant to you during your marriage.

The first thing that you must do is get a marriage license. This can be purchased at any Registry Agency for about \$45.00. Both of you must have some form of identification (e.g. birth certificate, driver’s license or something similar). If either of you has been previously married, you must bring your official Decree Absolute or Certificate of Divorce. The wedding must be taking place in Alberta. The license is valid for 90 days from the date of purchase, so do not buy it more than 90 days before the wedding.

Although it is not usually stressed, marriage is a legal commitment as well as a personal one. It is a contract between two people that will be enforced by the Courts. Some elements of the contract are discussed below.

**1. Sex**

By marrying, you agree to a voluntary sexual union with your spouse for the rest of your life, or until divorce, and to a monogamous (two person) relationship. Sexual relations with someone other than your spouse is considered adultery which shows that your marriage has broken down and your spouse may apply for divorce on this ground. A bigamous marriage (marriage to a second spouse while still married to the first spouse) is void at the outset, but a court can decide who, if any, of the parties are married.

**2. Maintenance**

You both have an obligation to maintain (support financially) each other and the children of the marriage. Under the Criminal Code it

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is an offence not to provide your spouse and your children with “necessaries” -- food, clothing, and shelter. In certain circumstances, a spouse may obtain necessaries by pledging the credit of his/her spouse.

### 3. Ability to Sue Your Spouse

You can sue your spouse in a civil court action. For example, you may sue your spouse if you are injured because of your spouse’s negligence. If you won in court, you would be compensated by your spouse’s insurance company for your injuries. This is presuming there is an insurance policy covering the negligence and a stranger would be compensated in the circumstances.

### 4. Testifying Against Your Spouse

If your spouse is charged with a criminal offence, you cannot be forced to testify against your spouse unless your spouse is charged with certain sexual offences, offences against the children of the marriage, or certain offences against you personally.

If your spouse is suing another person or being sued, you can be forced to testify. However, you do not need to disclose any communication between you and your spouse that took place during the marriage.

### 5. Engagement

An engagement is an agreement to marry and is a contract between you and your future spouse. There may be legal implications if the contract is broken. Although you cannot be forced to marry if you do not want to, you may be sued for breach of promise and damages may be awarded if the other party suffered economic losses in anticipation of the marriage. However, such court actions are very rare and are usually only taken in extreme circumstances.

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Gifts given to you in contemplation of marriage (i.e. wedding gifts) should be returned if the wedding is called off. By tradition, if an engagement is broken by a woman, she should return the engagement ring if one was given. The woman can only keep the ring if she and her fiancé marry or if the man, without any fault by the woman, breaks the engagement off.

### 6. Formalities of Marriage

There are certain formal requirements for a valid marriage. If these are not met, the Court may annul the marriage which means it is as if the marriage never happened. These requirements are:

- a. It must be voluntary (e.g. both parties agree to the marriage).
- b. Neither party may currently be married. Both must be single, widowed or divorced.
- c. You cannot be lineally related or siblings, either by blood or marriage. For example, you cannot marry your parents or grandparents.
- d. You must be 18 years of age or older. If you are between 16 and 18 years old, your parents must consent to the marriage, unless you have no guardian. A female under 16 can get married if she is pregnant or is the mother of a living child, but she still needs parental consent. If you are under age and wish to marry, you may be able to apply to the Court of Queen’s Bench to get rid of the need for parental consent.

If you marry without meeting the age requirement, the marriage will not be annulled if:

- a. there has been sexual intercourse before or after the marriage or
- b. you have lived together as husband and wife after the marriage.

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### 7. Same Sex Marriage

In Alberta, same sex marriage is not specifically recognized in legislation, but this legislation is overridden by the federal Civil Marriage Act. According to the Act, same sex marriage is legal, but religious officials are free to refuse to solemnize a marriage that is not in accordance with their religious beliefs. The procedure for same sex couples is the same as that for a heterosexual couple. If you and your same sex partner are considering marriage, you may want to consult a registry agent to ensure they will issue you a marriage license.

### 8. Whose Name?

It is a common belief that a woman must adopt her husband's name when they marry. This is not necessary. Either spouse has the option of retaining their maiden name, adopting their spouse's name, or using a hyphenated name (e.g. Smith-Jones). Either spouse may, if they wish, use their maiden name for legal purposes (e.g. signing cheques) and their spouse's name for social purposes. This name change is not a "legal" name change because the person changing names in this way does not have to report it to Vital Statistics. The person may go back to their maiden name (or any other name as long as it is not used for fraudulent purposes) at any time. The adoption of a new name is basically a "do-it-yourself" way of building a new reputation under a new name. The person changing his or her name may have trouble initially because people are not used to his or her new name, or because people will not believe that married people can have different last names.

### 9. Your Children's Names

If you and your spouse use the same last name, any children of that marriage will be registered on their birth certificates using that same last name. There can be, however a joint request, by both parents, to use a hyphenated name or use the other's maiden name.

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If you and your spouse use different last names any children of the marriage will be registered using the two surnames, hyphenated in alphabetical order. There can be a joint request, however, by both parents to use one of the two names or the names in some other combination.

If a woman is married but separated and conceives a child with another man, the woman may apply to have the child registered in her surname alone.

## PROPERTY

### 1. Who Owns It?

Property that is purchased or is accumulated by either the husband or the wife during the marriage is presumed to be matrimonial property. Both of the spouses have an equal say as to the property's use and disposition (either sale or giving it away). Matrimonial property means that each spouse has the same right to the full amount of the value of the property. Money in a bank account can also be jointly owned, with both the husband and wife having rights to the full amount.

Upon separation or divorce, the Court may step in and divide up your property according to the Matrimonial Property Act. Generally, the Act divides up all property purchased during the marriage equally. It makes no difference who paid for it. This includes companies, investments and pensions. Some property however is generally exempt for division. If one spouse owned property before the marriage, or received gifts, inheritance or money from a motor vehicle accident before or during the marriage, that has increased in value during the course of the marriage, the Court has the ability to use its discretion to divide up any increase in the value of the property, although the principal amount will belong to just the one spouse.

## **2. Buying a House**

Most couples who are buying a house put it in the form of a **Joint Tenancy**. This means that you share the ownership and if one of you dies, the other automatically takes over the deceased spouse's share. Thus, if one spouse dies, the other gets the entire house and it cannot be given away to a third party in the will of the deceased spouse.

The house may also be purchased as a **Tenancy-In-Common**. This means that you each own a share in the house. If one spouse dies, he or she may give his or her share away in the will to anyone they want. If there is a tenancy-in-common the property owned in common does not automatically go to the surviving spouse.

Although it may seem like an extra expense at the time, it is an excellent idea to have a lawyer handle the purchase of a house for you. This may be the biggest investment you ever make, and you should not risk losing it just because you missed a routine step in the deal. If your lawyer makes a mistake and you lose money, his or her insurance plan may be required to cover your losses.

## **3. Dower Rights**

Where your home is in the name of only one spouse, the Dower Act gives certain rights to the other spouse, so long as the spouses have lived together in the home. Note that the Dower Act only applies to the family "home" and may not apply to all types of homes. The Act requires that the spouse who is trying to sell the home follow certain steps. These are:

- a. The home cannot be sold without the consent of the spouse whose name is not on the title. There is a specific way to do this and usually a lawyer is required. If the home is sold without the proper consent forms, the other spouse may sue the spouse who sold the home for half of

the sale price or half of the appraised value of the home, whichever is greater.

- b. If one spouse dies and the home is registered in his or her name only, then the living spouse receives a Life Estate in the property. This means that even though the property may have been left to someone other than the spouse in the deceased spouse's Will, the living spouse may live there for the rest of his or her life and the person in the Will only gets the home after the remaining spouse dies. The living spouse cannot give away his or her interest in the home in their own Will and they cannot do large amounts of damage to the home.

## **4. Marriage Contracts**

More and more couples are entering into agreements before they marry. These agreements often deal with future plans, division of chores and money arrangements during the marriage. Although it may be a useful exercise to discuss these issues, such agreements are not always enforced by the Courts.

However, a property division agreement is usually enforced by the Courts if done properly. You may agree that you do not want your property divided under the Matrimonial Property Act if you separate or divorce. In such a case, you should then set out your own plan for dividing up the property in the event of a separation. This type of agreement is especially useful if one of you owned property or investments prior to the marriage, or if one of you owns a company. This kind of agreement can be entered into at any time before or during the marriage.

In order to be recognized by the Courts, you must each see your own lawyer who will review the agreement. You must also acknowledge in writing that you understand that you may be losing your rights under the Matrimonial Property Act.

### **5. Bank Accounts and Debts**

Bank accounts may be in individual or joint names. If they are in joint names, either of you may remove the money. If the account is in one of your names only, the other should have no access to it. It is a good idea to check with the bank on whether or not any joint account will be frozen upon the death of one of the spouses. Jointly owned assets may be frozen while the deceased spouse's estate is settled. If the joint account is frozen, the other spouse may have no access to the account for some time while the estate is probated (court procedure to clean up the matters in the Will). However, most banks will allow withdrawals to cover funeral expenses. The surviving spouse should consult a lawyer before paying off any debts of the deceased spouse.

Debts can also be in joint names. If you both signed the credit card application or the loan application, you are each responsible for the entire debt individually. If one doesn't pay, the creditor (lender) will go after the other. Always make sure you understand the legal consequences before you sign anything.

Credit can cause a lot of problems. If you feel that you are over your head in debt, you can get help. Credit Counselling has a program to help you organize a budget. They can also help you deal with your creditors if you cannot afford all your payments.

Bankruptcy should be considered only as a last resort. The effect of bankruptcy is that in the future it will be very difficult to get any credit.

### **6. Wills and Estates**

When you marry, any Will that you already had becomes invalid unless it states that it was made in contemplation of marriage to your future spouse. It is only valid if it is clear that you made it while intending to marry your spouse. It is important to have a Will in order to arrange your affairs after your death. If you die

without a Will, the government steps in and divides up the property according to the Intestate Succession Act.

If you leave your spouse, adult interdependent partner, or children under 18, out of your Will, or with insufficient means for their maintenance and support, they can apply for a share of your estate under the Dependants Relief Act. If your children over 18 are able to earn their own living and are not in the Will, they may not get a part of the estate, according to the Act. If your children over 18 are unable to earn a livelihood due to some mental or physical disability, and they are not in the Will, they may be able to take legal action and get part of the estate.

According to the Family Law Act, a guardian who is also a parent may name one or more guardians for their children in his/her will. However, the main consideration for the court is the best interests of the child. Therefore, naming a guardian for your children in your Will does not guarantee that the Court will appoint that person, but it does mean the Court will consider your wishes when determining what is in the best interests of the children. If both spouses die without a Will, the government will appoint a guardian for the children until the Court determines who the children's permanent guardian will be.

### **7. Children**

When you are married, you are both guardians of the children of the marriage. This means that you have equal rights and responsibilities with respect to your children. This only changes if you make an agreement regarding guardianship or if the Court makes a parenting order.

If there is a parenting dispute on separation, it can be decided by the Courts. When making this decision, the Court looks at what is in the best interests of the child (i.e. which parent will provide the best home for the children). Family Justice Services provides free counselling services to help parents sort out these issues and to

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make parenting time and support agreements. They will also assist both parties in Family Court if there is a need for a Court order.

You are obliged by law to provide emotional and physical care for your children. If you neglect your children, or abuse them, the government can take them away from you under the Child, Youth and Family Enhancement Act.

### 8. Dependant Adults

As families get older, it often happens that certain relatives become unable to care for themselves. In such a case, you may wish to be named as a guardian for a relative so that you may make the day to day decisions for that person. In order to do this, you must be appointed by the Court. The Public Trustee handles such applications and will even take on the role as guardian if one is needed but no one is willing to assume the duties. In addition, it may be necessary to have a trustee appointed to handle the financial affairs of that person. Once again, a court order is required. The Public Trustee also handles these applications and will serve as trustee if there is no one willing to take on the responsibilities.

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### REFERRAL NUMBERS

Do not go immediately to a lawyer if you are having problems. It is best to first go to a marriage counsellor and see if there is an easier solution. There are many counselling agencies available in the Edmonton area, and many other agencies willing to give information and advice. Some of these are:

Alberta Government Service Consumer Info Centre [780] 427-4088  
[www.governmentservices.gov.ab.ca](http://www.governmentservices.gov.ab.ca)

Catholic Social Services - family services . . . . . [780] 432-1137  
[www.catholicsocialservices.ab.ca](http://www.catholicsocialservices.ab.ca)

Cornerstone Counselling . . . . . [780] 482-6215  
[www.cornerstonecounselling.com](http://www.cornerstonecounselling.com)

Credit Counselling. . . . . [780] 423-5265 or 1-888-294-0076  
[www.creditcounselling.com](http://www.creditcounselling.com)

The Family Centre. . . . . [780] 423-2831  
[www.the-family-centre.com](http://www.the-family-centre.com)

Family Justice Services . . . . . [780] 427-8343  
[www.albertacourts.ab.ca/go/familyjusticeservices](http://www.albertacourts.ab.ca/go/familyjusticeservices)

Family Law Information Centre. . . . . [780] 423-2831  
[www.albertacourts.ab.ca/familylaw](http://www.albertacourts.ab.ca/familylaw)

Jewish Family Services . . . . . [780] 454-1194

Lawyer Referral Service . . . . . 1-800-661-1095

Pastoral Counselling Group . . . . . [780] 482-8998  
[www.pastcoun.com](http://www.pastcoun.com)

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Public Guardian . . . . . [780] 427-0017  
[www.seniors.gov.ab.ca](http://www.seniors.gov.ab.ca)

Strathcona Family and Community Services . . . . [780] 464-4044

Vital Statistics (legal name change) . . . . . [780] 427-7013  
(marriage licences) . . . . . 1-866-303-4983  
[www.governmentservices.gov.ab.ca](http://www.governmentservices.gov.ab.ca)