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A GUIDE TO THE LAW IN ALBERTA REGARDING



DIVORCE

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GENERAL

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VOCABULARY

Spouse - The person you are married to.

Plaintiff vs. Defendant - The spouse who begins the divorce action is known as the Plaintiff, the other spouse is the Defendant. It is important to know this difference, as often in divorce actions you will have the same last name.

Justice – A judge in the Court of Queen’s Bench, where divorces are heard

Separation - The spouses are living separate and apart, with at least one of them having the intention to be separated.

Grounds – Reasons forming the basis of an action

Contested vs. Uncontested Divorce - An *uncontested* divorce means that both spouses agree on everything dealing with the divorce. This includes agreements on:

- a. The fact that they both want a divorce.
- b. How the property is to be divided (called an action for Division of Matrimonial Property)
- c. What custody and access arrangements will be in place for children
- d. How much money will be paid in child maintenance (also referred to as child support).
- e. How much money will be paid as spousal maintenance.

If the spouses cannot reach an agreement on any of these things the divorce is called a *contested divorce*. A contested divorce may take longer because court applications or trial may be required to settle the matters the spouses do not agree on.

Divorce Judgment - An order of the Court that ends a marriage between a couple. A divorce judgment will be final thirty-one days after it is signed by the Justice of the Court of Queen’s Bench,

unless one of the spouses appeals the judgment within that thirty-one day period.

Certificate of Divorce - This is the final document in a divorce, and must be applied for thirty-one days after the divorce judgment. It proves that the divorce has been finalized, and will be required as evidence of the divorce if either spouse wishes to marry again.

Access - A spouse with “access” has the right to see the children of the marriage who are currently living with the other spouse, and the right to be given information regarding the health, education and welfare of the children. “Access” and “visitation” mean the same thing, although Courts now refer to it more commonly as “parenting time”.

Custody - “Custody” includes physical control of the children, as well as decisions regarding the children’s care, health, education, welfare and religion. There are two types of custody orders:

- a. Joint Custody - An order from the Court granting custody of any children of the marriage to both spouses. Unless there is a Court order to the contrary, custody will always be held jointly. Joint custody works best when both parents have remained on good terms and can discuss matters concerning the children in a reasonable way.
- b. Sole Custody - An order from the Court granting custody of any children of the marriage to only one person (i.e. to only one spouse). This means that one parent has a full right to make all of the decisions regarding the children. The access parent still has the right to make inquiries and get information about the child.

Maintenance - Refers to payments made from one spouse to the other to support any children or the former spouse. “Maintenance” and “support” mean the same thing.

SHOULD I GET A DIVORCE?

A divorce is a serious matter. It removes the rights and obligations associated with marriage, and leaves each person free to re-marry. Divorce is something to be thought over carefully, perhaps with the help of a professional counsellor.

If you and your spouse decide to separate, there is no need to start divorce proceedings right away. Time apart may give the two of you a chance to work out some of your problems. If you need money to help support yourself and/or your children while separated, you can apply to Family Court to get an order from a Justice for support. Family Court will also handle disputes over who gets the children during the separation and when and how often the other spouse may see the children. These are called interim orders.

Family Justice Services is a helpful agency to contact before appearing in Family Court. Family Justice Services works directly with individuals and also with the Justices of the Alberta Provincial Court and the Court of Queen's Bench to help people get appropriate solutions for their family law issues. For more information, call [780] 427-8329.

Family Law Information Centre (FLIC) is also a useful resource. They can provide you with information if you want to make a family law application and can help you learn about the Child Support Guidelines and other areas of family law. To reach FLIC, call [780] 415-0404.

THE PARENTING AFTER SEPARATION SEMINAR

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

Call to register for this free seminar at [780] 413-9805, which will hopefully give you and your spouse a new perspective on the divorce process and the impact it may have upon your child.

FOCUS ON COMMUNICATION IN SEPARATION (FOCIS) COURSE

The *Focus on Communication in Separation (FOCIS) Course* is a free 6-hour course offered monthly by Alberta Justice Family Mediation Services. 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.

CAN I GET A DIVORCE?

The *Divorce Act* says there is only one reason for a divorce: Marriage Breakdown. There are 3 ways in which marriage breakdown can happen:

1. Separation

The spouses must have lived separate and apart for at least one year prior to the Divorce Judgment. The divorce action may be started before the one-year period has ended, but the spouses must still wait the full year before the divorce judgment will be granted.

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

It should be noted that this list is not complete because every separation is different.

2. Adultery

If either spouse engaged in acts of an intimate nature with someone else during the marriage, the law defines this as adultery. Only the spouse who did not commit adultery can file for divorce. A spouse cannot use his or her own adultery as grounds for a divorce. Adultery must be proven to the 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 a spouse is using adultery as the reason he or she is getting a divorce, he or she does not have to wait a year before starting or completing the divorce proceedings. However, the Justice may decide not to grant the divorce if the spouse filing for divorce has either encouraged or forgiven his or her spouse's adultery.

3. Cruelty

A divorce will be granted if there is cruelty of either a physical or mental nature. Cruelty needs to only happen once before a spouse may ask a Justice for a divorce. However, the other

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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 a spouse is using cruelty as the reason he or she is getting a divorce, he or she does 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.

REASONS WHY A JUSTICE MAY NOT LET YOU GET A DIVORCE

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

- a. 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.
- b. If you and your spouse have children, 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.

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To ensure that these arrangements are made properly, seek independent legal advice before going to court. The Family Law Information Centre can answer questions that you may have regarding child support and parenting orders. You may obtain a half hour of free legal advice from a lawyer by calling the Lawyer Referral Service 1-800-661-1095.

MATRIMONIAL PROPERTY

It is possible for a couple to be granted a Divorce Judgment before they have dealt with the division of matrimonial property. However, most of the time, matrimonial property will be divided between the spouses during the divorce proceedings, either through an agreement or 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.

RECONCILIATION

A spouse who is seeking a divorce based on a one-year separation may reconcile with his or her spouse. 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.

HOW CAN I GET A DIVORCE? - YOUR OPTIONS

1. Do-It-Yourself

Only the most straightforward divorces should be done without professional legal assistance. This usually means the divorce is "uncontested".

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If you decide to do your own divorce, Student Legal Services of Edmonton offers a clinic for those who qualify, that provides instructions on how to do your own divorce paperwork for a fee of \$25.00. You should expect the entire process for an uncontested divorce to cost between \$285.00 and \$385.00. This price covers administrative costs, Court filing and process server fees.

(PLEASE NOTE: It is also **very** important that you know exactly where your spouse is living so that you can have them served with your divorce papers.)

2. Hiring a Lawyer

If a lawyer handles your divorce, it will be more expensive. A contested divorce will also cost more than an uncontested divorce because it will require a great deal more of the lawyer's time.

The services and advice of a lawyer may save you thousands of dollars in the long run. Most lawyers base their fees on the amount of time they spend on your case. You should talk to your lawyer about his or her fees during your first interview so that you know what to expect. You can help your lawyer and save yourself money by preparing a written list of questions that you want answered before your appointment date.

As part of your divorce case, you may also ask the Justice to order that your spouse pay for some of the legal costs. However, each spouse usually pays their own costs. Your lawyer will discuss with you whether you should ask for this type of order.

You may wish to call the Lawyer Referral Service (1-800-661-1095), and get the names of three divorce lawyers in your area who you can talk to about your specific situation. The first half hour consultation will be free.

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 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 place. 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 somewhere else in Canada, a marriage certificate issued by the government of the place where you married would be sufficient proof of an out-of-province marriage. Please remember that you must still meet the “ordinarily resident” requirement 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, 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 of 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 3-5 months. A contested divorce could take as long as several years.

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.
2. Once the Statement of Claim for Divorce is completed, it must be signed and taken to the Courthouse.
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.
4. After service of the Statement of Claim, the Defendant has 15 days (40 days if he or she is out of province) to dispute the Statement of Claim. If the Defendant does not file a dispute (Statement of Defence), this means the divorce is uncontested. The Plaintiff may then file a Request for Divorce, Affidavit of Applicant, and a proposed Divorce Judgment. Your affidavit should include:
 - a. Your 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.

- 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.
- 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, 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.
- 7. Other steps may be needed if the defendant resides outside of Canada, if the defendant cannot be located, or if the plaintiff is asking for maintenance or costs. There may be many more steps in a contested divorce.

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.

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. The spouses might reconcile. If so they should apply at court to set aside the Divorce Judgment. They 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: No appeal can 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.

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REFERRAL NUMBERS

- Alberta Justice Family Mediation Services [780] 427-8329
- Alberta's Department of Vital Statistics [780] 427-7013
- Child Support Services [780] 415-6400
- Family Justice Services [780] 427-8329
- Family Law Information Centre (FLIC) [780] 415-0404
- Family Violence Prevention Centre [780] 423-1635
- Family Violence Info Line [780] 310-1818
- Focus on Communication in Separation (FOCIS) Centre [780] 644-5092
- Lawyer Referral Service 1-800-661-1095

- www.lawsocietyalberta.com/publicservices/lawyerreferralservice.c
fm

- Legal Aid Society of Alberta [780] 427-7575
www.legalaid.ab.ca

- Maintenance Enforcement Program [780] 422-5555
www.justice.gov.ab.ca/mep

- Parenting After Separation Seminar [780] 413-9805
www.albertacourts.ab.ca/go.aspx?tabid=547

- Queen's Bench Divorce Clerks [780] 422-2425

- Student Legal Services
Family Law Office [780] 492-8244

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Marriage Counselling

- Catholic Social Services [780] 432-1137
. or [780] 424-3545 or [780] 471-1122
www.catholicsocialservices.ab.ca

- Alberta Family Mediation Society 1-877-233-0143
www.jfsc.org

- Canadian Mental Health Association [780] 414-6300

- Community Counselling Centre [780] 482-3711
www.pastcoun.com