



Type of law:  
**FAMILY LAW**

A 2022 Alberta Guide to the Law

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# Getting Married



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# GETTING MARRIED



Marriage is a legal commitment as well as a personal one. Marriage comes with certain rights and responsibilities. See the pamphlet below for more information.

## 1 Marriage Licence

The first thing for couples wanting to get married to do is get a marriage licence from a registry agency. Bring valid identification with you. Both parties must provide their parent's full names and birth places, and be unmarried. The licence is valid for 3 months - so you must get married within 90 days of buying the licence. The licence costs \$40, but service fees may vary.



## 2 Marriage Ceremony Requirements

- Your Alberta marriage licence must be valid.
- The marriage licence must be given to the person performing the marriage before the ceremony begins.
- The ceremony must take place in Alberta.
- The person performing the ceremony must be authorized by Vital Statistics to do so.
- The couple getting married and two adult witnesses must be physically present with the person performing the ceremony.
- The couple, witnesses, and wedding party cannot be under the influence of drugs or alcohol and witnesses cannot be cognitively impaired.
- The couple and witnesses must be fluent in the language being spoken at the ceremony and fully understand the English forms they must sign.



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## **WHAT IS MARRIAGE?**

Marriage is a legal commitment as well as a personal one. When two people get married, their rights and responsibilities under the law change. This pamphlet provides general information on the law in Alberta as it relates to marriage.

### ***Marriage Licence***

The first thing step towards getting married is for you and your soon-to-be-spouse to get a marriage licence with at any Registry Agency. A marriage licence shows the person performing your marriage that you have met all the legal requirements to be married in Alberta. There is a \$40 government fee, and additional service fees will vary with each Registry Agency. Both parties must speak English or have an interpreter present when applying. Check with the registry in advance if either person is hearing, speech, or visually impaired, or if either person is a represented adult or an assisted adult with a court ordered co-decision maker.

Both parties must provide their parent's full names and birth places. They must also be single, divorced, or widowed. If either party is divorced, they must bring their official Decree Absolute or Certificate of Divorce. You must be free of the influence of drugs and alcohol when you apply for the license. You cannot marry a grandparent, parent, child, sibling, half-sibling, or grandchild, whether you are related by blood or by adoption. An Alberta marriage licence is only valid for marriages taking place in Alberta. A marriage licence is valid for 3 months, so you must get married within 90 days of buying the licence.

The full licence must be given to the person who will perform your marriage. Do not fold it or damage it.

To qualify for a license both parties must have some form of identification (e.g., birth certificate, driver's license or something similar). They must also be 18 years old or older. To marry before the age of 18, the party must have the consent of their guardians unless the guardian is mentally incompetent, or consent cannot be obtained. If a party is claiming that they cannot obtain the consent of their guardian, they can apply to the Court of Queen's Bench to dispense with consent. No one under the age of 16 can be married in Alberta.

### ***At the Ceremony***

There are two legal kinds of marriage ceremonies that can be performed in Alberta: religious and civil. Whether the ceremony is religious or civil, a valid Alberta marriage licence is always needed.

A **religious ceremony** is performed by a religious clergy member such as a priest. The clergy member must be registered with Vital Statistics to perform marriages in Alberta according to the customs of that religious organization.

**Civil ceremonies** are performed by a marriage commissioner appointed by the Alberta Government. During civil ceremonies, the parties to the marriage will declare two legislated statements in front of their soon-to-be spouse, witnesses, and the marriage commissioner.

### **Marriage Ceremony Requirements**

- The Alberta marriage licence must be valid on the date of marriage
- The Marriage Licence form must be given to the person performing the marriage ceremony before the marriage ceremony begins
- The ceremony must take place in Alberta
- The person performing the marriage ceremony must be authorized by Vital Statistics to do so
- The couple getting married and two adult witnesses must be physically present
- Witnesses cannot be cognitively impaired
- The couple and witnesses must be fluent in the language being spoken at the ceremony and fully understand the English forms they need to sign
- None of the wedding party can be under the influence of drugs or alcohol

### ***After the Ceremony***

The person performing the marriage will keep the Marriage Licence and send the Registration portion to Vital Statistics within 48 hours of the ceremony for registration. The Registration of Marriage is a legal document that will become the official record of marriage.



### ***Marriages Outside of Canada***

Usually, marriages that are legally performed in another country are valid in Canada and you do not need to register them here. If you are planning on being legally married in a foreign country, contact the nearest embassy, high commission, or consulate for more information.

Some couples may want a destination wedding where they have their ceremony away from home. They may get legally married in the foreign country, but this requires that all foreign laws are followed. Many couples wanting a destination wedding will instead have a “symbolic ceremony”. Symbolic ceremonies cannot be legally registered. In these situations, the legal ceremony (as discussed above) must still take place in Alberta with a marriage commissioner.

### **THE MARRIAGE CONTRACT**

Marriage is a contract between two people that will be enforced by the courts. Some elements of the contract are discussed below.

#### ***Monogamy***

By marrying, you enter a voluntary monogamous (two-person) sexual relationship with your spouse for the rest of your life, or until divorce. Having sexual relations with someone other than your spouse is considered adultery and your spouse may apply for divorce on this ground. If you are still legally married and attempt to marry a second spouse, this second marriage will be void.

#### ***Maintenance***

Both spouses have an obligation to ‘maintain’ (financially support) each other and the children of the marriage. It may be a crime not to provide your spouse and your children with “necessaries” -- food, clothing, and shelter.

#### ***Ability to Sue Your Spouse***

You can sue your spouse in a civil court action. An example of this is you could sue your spouse if you are injured because of their negligence in a car accident.

### ***Testifying Against Your Spouse***

*The Canada Evidence Act* allows the prosecution to call on the spouse of an accused as a witness. The limit to their witness testimony is that a spouse cannot be forced to disclose any statements made to them by the accused, although a spouse can choose to disclose.

The protection of communication between spouses applies only to legally married individuals and not to common law partnerships.

This is a complex area of the law. For further information regarding testifying against your spouse please consult the *Canada Evidence Act* and a lawyer.

### ***Engagement***

An engagement is an agreement to marry; it is a contract between you and your future spouse. There may be legal implications if the contract is broken. You cannot be forced to marry if you do not want to, but under very rare and extreme circumstances 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. Similarly, it is generally a good idea to return gifts given to you in contemplation of marriage (i.e., wedding gifts, engagement ring) if the wedding is called off.

Consult a lawyer if you have further legal questions following the breakdown of an agreement to marry.

## **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:

- It must be voluntary (both parties give “free and enlightened consent” to be the spouse of the other).
- Neither party may currently be married. Both must be unmarried, widowed, or divorced.
- You cannot be related, either by blood or adoption. For example, you cannot marry your parents or grandparents.





You cannot marry if you are under the age of 16. If you are between 16 and 18 years old, your guardian must consent to the marriage if you have a guardian who is competent. If you are underage, wish to marry and are unable to get consent from your guardian, you can apply to the Court of Queen's Bench to get rid of the need for parental consent.

If you marry without meeting the requirements of the Act, the marriage will not automatically be annulled (cancelled). It will be up to the Court of Queen's Bench to determine if the marriage is lawful even with the non-compliance with the Act.

### ***Same Sex Marriage***

Same sex marriage is lawfully recognised. Religious officials may refuse to perform a marriage that is not in accordance with their religious beliefs. By contrast, a civil marriage commissioner cannot refuse to perform a same sex marriage. The procedure is otherwise the same for same sex couples as that for heterosexual couples.



### ***Whose Name?***

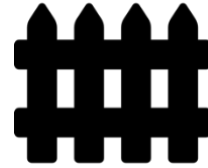
In Alberta, one spouse may adopt the other spouse's last name when they marry or may choose to use a hyphenated last name (e.g., Smith-Bear). However, this is not necessary, and both spouses can keep their last name. To legally change your identification to a newly adopted last name, the spouse must take the official government Marriage Certificate to a registry agent to begin the process of changing their identification. For more information on changing your name, see our Change of Name pamphlet.

Another option is for either spouse to use the name they were born with 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.

### ***Your Children's Names***

If the parents agree on the last name of the child, the child's name will be registered under that name. If the parents do not agree, the last name will have the last name of each parent's legal name, hyphenated, in alphabetical order. If only one parent is listed on the birth record, that parent will choose the child's name.

## PROPERTY



### ***1. Who Owns It?***

Generally, property that is purchased or is accumulated by either spouse during the marriage is presumed to be family property. Money in a bank account can be considered jointly owned family property, with both spouses having rights to it.

If you and your spouse divorce and conflict arises, the Court may step in and divide up all property purchased during the marriage equally. Property which was acquired during the marriage is presumed to be split equally with some exceptions. It makes no difference who paid for it. This includes companies, investments, and pensions.

If one spouse owned property before the marriage, that property belongs to one spouse alone; it is “exempt” from division. The same rule applies to gifts, inheritance, or money from an accident paid to one spouse. However, if the value of exempt property increases during the marriage, the Court can divide up the increase in the value of the property in the event of a divorce.

An exemption to property may be reduced if it is mixed with family property. For example, if inheritance money is deposited in a joint bank account that is used to pay household expenses, the exemption for the inheritance may be lost or reduced.

### ***2. Buying a House***

Most couples choose to own a house together in a **Joint Tenancy**. This means that if one partner dies, the other automatically takes over the deceased spouse’s share (they get the entire house) and it cannot be given away to anyone else 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, they may give their share away in the will to anyone and the property does not automatically go to the surviving spouse.

In Alberta, a tenancy-in-common is presumed; couples choosing to own a home as joint tenants must specify that on the transfer document. If you are considering the purchase of a home, you should consult a real estate lawyer for more information.

### **3. Dower Rights**

When spouses live together in a home after they marry each other, the *Dower Act* forbids the sale of the family home without the consent of both spouses. This applies even if only one spouse has their name on title. It is important to consult a lawyer if you feel your dower rights may be breached as a result of your spouse's or spouse's estate's actions.

### **4. Marriage Contracts**

A property division agreement outlines how you want your property divided in the event of a divorce. When an agreement about property division is made before marriage, it is sometimes referred to as a 'prenuptial' agreement. Property division agreements can be especially useful if one spouse owned property or investments prior to the marriage, or if one spouse owns a company. Property division agreements can be entered into at any time before or during the marriage.

For a property division agreement to be binding, each spouse must obtain independent legal advice prior to signing it. This means that each spouse will need to meet with a different lawyer separately to review the agreement. Both spouses must also acknowledge in writing that they understand they may be giving up rights under the *Family Property Act* by entering into the property division agreement. If you do not co-sign an agreement, it does not necessarily mean that you are not obligated to abide by it. A lawyer can be helpful for understanding your rights and obligations.

### **5. Debts**

During a marriage, debts can be in joint names. If both spouses signed a credit card application or loan application, they are each responsible for the entire debt individually. If one doesn't pay, the creditor (lender) will go after the other. Ensure you understand the legal consequences before you sign anything. Debt that a couple takes on during a marriage will be divided equally if the spouses divorce, regardless of whose name the debt is in.

If you are over your head in debt, you can get help. Credit Counselling (see Resource List at the end of this pamphlet) has a program to help you organise a budget. They can also help you deal with your creditors if you cannot afford all your payments.



## **6. Wills and Estates**

If you married before February 1, 2012, any will you made prior to marriage will be revoked and property would be divided up as if you did not have a will. If you were married on or after February 1, 2012, a will from before your marriage will not be revoked simply because you got married.

A will can arrange your affairs after your death. If you die without a will, the government steps in and divides up the property according to the *Wills and Succession Act*.

If you leave your spouse or family member out of your will or do not provide enough for their maintenance and support, they can apply to the court for a share of your estate, per section 88 of the Alberta *Wills and Succession Act*.

Under the *Family Law Act*, a guardian who is also a parent may name one or more guardians for their children in their will. Naming a guardian in your will does not guarantee that the Court will appoint that person. However, 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. The appointed guardian takes on all the rights and responsibilities that the parent had over the child prior to their death.

### **CHILDREN**

Each spouse is a guardian with equal rights and responsibilities respecting children of the marriage. This arrangement will only change if you make an agreement regarding guardianship or if the Court makes a parenting order.

If there is a parenting dispute following a separation or divorce the Court looks at what is in the best interest of the child.

You are obliged by law to provide emotional and physical care for your children. It is against the law to neglect or abuse your children. Neglect and abuse can result in criminal charges, and the government may remove the children from your care.

Edmonton Resolution Support Centre, Edmonton Community Legal Centre, and Legal Aid Alberta provide free and low-cost services to help low-income parents sort

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

### ***Being a Guardian***

A guardian is responsible for ensuring a child has the necessities of life. A guardian is also in charge of making other important decisions for the child, such as where the child will live, what medical treatment the child will receive, decisions related to the child's education and religious upbringing, and appointing someone to act as the child's guardian in an emergency.

When a child is born and their biological or adoptive parents are married, both parents are automatically guardians of the child. When biological or adoptive parents are unmarried at the time a child is born, both parents are automatically guardians if any of the following apply:

- The parents are married after the birth of the child
- The parents were married 300 days prior to the birth of the child
- The parents have lived together for at least 12 consecutive months and their child is born during that time
- Providing financial or other support to the child, or to the child's mother during pregnancy, other than by court order
- The parents are adult interdependent partners, either at the time of the child's birth or after. Please see our Adult Interdependent Partnerships Booklet for more information on this topic.

People who are not automatically guardians can apply to Family Court to be named guardians.

To apply to be a guardian, fill out an **Adult's Statement – Guardianship of Child** form and a **Claim – Family Law Act** form, and file them at the same court where you have already been to court or started a court action. If you have not done these, you can file these claims at any court in Alberta. The forms and more information can be found at this website:

<https://www.alberta.ca/apply-child-guardianship.aspx>

Please see our "Parenting Time and Contact" and "Child Support" pamphlets for more information regarding children.



## WHO CAN I CALL FOR MORE HELP OR INFORMATION?

### *Legal Resources*

<b>Edmonton Community Legal Centre (ECLC)</b> Telus House, South Tower Second floor, 10020 – 100 Street, Edmonton, AB	<b>Ph: 780-702-1725</b> <a href="http://www.eclc.ca">www.eclc.ca</a>
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Edmonton Community Legal Centre (ECLC) provides legal services for low-income Albertans in certain areas of family and civil law. These services include free legal information, referrals, and legal education. ECLC may also be able to provide legal advice if you fall within their eligibility criteria. Much of their legal information can be found on their website, as well as the time, dates, and locations of their public legal education programs. Additionally, ECLC has a fee waiver program if your income falls within their guidelines.

<b>Student Legal Services Family Law Project</b> 11036 88 Avenue Edmonton, AB	<b>Ph: 780-492-8244</b>
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The Family Law project can provide basic legal information or act as their agent in Provincial Court for some legal issues, provided you meet their income eligibility guidelines. They also offer Do-Your-Own-Divorce Clinics.

<b>Legal Aid Society of Alberta</b> Edmonton Law Courts (2 <sup>nd</sup> floor) Churchill Square	<b>Toll Free Ph: 1-866-845-3425</b>
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The Legal Aid Society of Alberta functions to assist low-income Albertans with legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and if you meet eligibility guidelines.

<b>Provincial Court Clerks – Family</b>	<b>Edmonton: 780-427-2743</b>
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The Provincial Court Family Clerks can assist in providing information for Provincial Court Family matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

<b>Edmonton Resolution and Administration Services</b>	<b>Toll free Ph: 1-855-738-4747</b>
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Edmonton Resolution Support Services provides various services to assist individuals dealing with a family or civil matter. They have numerous free services, such as Family Court Counsellors, Family Mediation, Child Protection and Intervention Mediation, Civil Mediation, and assistance on Court Forms and Orders.

<b>Emergency Protection Order Program</b>	<b>Ph: 780-422-9222</b> <b>*If after business hours, contact local police*</b>
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The Emergency Protection Order Program is for those who experience family violence and are seeking immediate protection from further harm. The free program will provide help with risk assessments and safety plans, provide information, and provide a lawyer for the purpose of obtaining an Emergency Protection Order (EPO). This lawyer is not being provided to assist you with anything beyond the EPO.

<b>Office of the Child and Youth Advocate (OCYA)</b> #600 – 9925 109 Street NW Edmonton, AB T5K 2J8	<b>Ph: 780-422-6056</b> <b>Email:</b> ca.information@OCYA.alberta.ca
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The Office of the Child and Youth Advocate (OCYA) will help children and youth voice their opinions, concerns, wants, and needs during various decision-making processes so that the best interests of the child are better understood. The OCYA ensures that the voice of the child is heard and that their rights are protected throughout the intervention process.



<b>Lawyer Referral Service</b>	<b>Toll Free Ph: 1-800-661-1095</b>
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The Lawyer Referral Service can help you find out contact information for practicing lawyers as well as who an appropriate lawyer may be for your matter. When you call, you will speak to an operator, and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure you let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be free and you can discuss your situation and explore options. This free half hour is more for consultation and brief advice and is not intended for the lawyer to provide free work.

<b>Centre for Public Legal Education Alberta (CPLA)</b>	<b>Ph: 780-451-8764</b> <b>Email: info@cplea.ca</b> <a href="http://www.cplea.ca">www.cplea.ca</a>
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CPLA provides detailed legal information online to the Alberta public on various areas of the law.

**NOTE:** *They do not provide legal assistance or advice or answer specific legal questions.*

<b>Dial-a-Law</b>	<b>Ph: 403-234-9266</b> <a href="http://www.clg.ab.ca/programs-services/dial-a-law/">www.clg.ab.ca/programs-services/dial-a-law/</a>
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Dial-a-Law is provided by Calgary Legal Guidance for all Albertans. You can call the toll-free number to receive general information on a variety of legal topics. If you have access to a computer, you can go to their website and choose to either read or listen to the information.

## Other Resources

<b>Find a Marriage Commissioner</b>	<a href="http://www.servicealberta.ca/find-a-marriage-officiant.aspx">http://www.servicealberta.ca/find-a-marriage-officiant.aspx</a>
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This website can assist in finding someone to perform your marriage ceremony who is legally authorized by Vital Statistics to do so. This list does not include religious clergy.

<b>Alberta Supports Centre (Various Locations)</b> <b>Edmonton Central Location</b> 10242 105 Street NW Edmonton, AB T5J 3L5	<b>Ph:</b> 1-780-644-9999; 780-415-4900 <b>Email:</b> abworksis@gov.ab.ca
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Alberta Supports Centre functions to assist individuals and families with accessing various financial, family, and social supports. Such supports include Alberta Works and AISH.

<b>Service Canada (Various Locations)</b> <b>Downtown Location:</b> Main Floor Canada Place 9700 Jasper Avenue Edmonton, AB T5J 4C1	<b>Ph:</b> 1-800-622-6232
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Service Canada is a starting point for individuals seeking to access Federal government services and benefits, such as Employment Insurance and passports.

<b>Family Violence Info Line</b>	<b>General Info Line - 24 Hour Toll-Free</b> <b>Ph:</b> 310-1818 (no area code) <b>Emergency Financial Support:</b> 1-866-644-5135 <b>Family Violence and Tenancy Concerns:</b> 1-877-644-9992 <b>Sexual Assault Centers:</b> 780-482-4357
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The Family Violence Info Line provides callers with an opportunity to speak with trained staff regarding their situation and options.

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