

What you need to know about... Exclusive Possession Orders

What is an exclusive possession order?

An exclusive possession order is a court order that can give you sole possession of the matrimonial or family home. A court can order your spouse or partner be evicted from the home and can require him or her to stop entering or going near the home. An exclusive possession order can also give you exclusive possession of the family vehicle, pets, and other household goods you need to look after yourself and your children.

Your matrimonial/family home is:



- property that is owned or leased by you or your spouse / partner;
- where you have lived with your spouse / partner; and
- a house, self-contained dwelling unit, part of a business with a living space, a mobile home, a condo, or a suite.

Exclusive possession of your family home, car, pets, and household goods can also be granted if you successfully apply for an Emergency Protection Order (EPO) or Queen's Bench Protection Order (QBPO). To discuss the best order for your situation, call the Family Violence Info Line at 310-1818, Legal Aid's Emergency Protection Order Program at 1-866-845-3425, or visit your local family violence information centre or shelter. If you are in immediate danger, call 911 for help. For more information about these EPOs and QBPOs, read the resources in our **Families and the Law: Domestic Violence Series**, available at www.cplea.ca/publications or www.willownet.ca.



It is recommended that you seek assistance from a lawyer to apply for an exclusive possession order. If you cannot afford a lawyer, contact Legal Aid Alberta at 1-866-845-3425, check with your local legal clinic (see full list at http://www.pbla.ca/gethelp/item.5602-Help_for_Individuals), or contact Resolution and Court Administration Services, visit www.rcas.alberta.ca or call 1-855-738-4747.

When can I apply for an exclusive possession order?

You can apply for an exclusive possession order if your relationship has broken down and you and your partner or spouse cannot peacefully live together. You can apply for exclusive possession of even if your name is not on the title or lease of your home. Exclusive possession can be granted for owned and rental properties.

If you are married, you can apply for exclusive possession of your matrimonial home under the *Matrimonial Property Act* or the *Family Law Act* (if you combine the application for exclusive possession with an application for financial support). It is important to know the *Matrimonial Property Act* gives both spouses the right to apply for exclusive possession of the home—even if you signed a contract waiving this right.

If you are in an adult interdependent relationship (or common law relationship), you can apply for exclusive possession of your family home under the *Family Law Act*. However, you must combine an application for exclusive possession with a partner or child support application. Exclusive possession of the home is ordered as part of the partner or child support application. You can also apply if you have started an action in the Court of Queen’s Bench to divide your property.

How do I apply for an exclusive possession order?

You must apply for an exclusive possession order through the Court of Queen’s Bench and it is highly recommended you seek legal advice and/or hire a lawyer to help you with your application. Read our booklet **Working with a Family Law Lawyer** for more information on finding and choosing a lawyer (available at www.cplea.ca/publications or www.willownet.ca). If you cannot afford a lawyer, call Legal Aid Alberta at 1-866-845-3425 or visit your local legal clinic to see if they can help (see full list at http://www.pbla.ca/gethelp/item.5602-Help_for_Individuals).

If you plan to represent yourself, you should start by seeking assistance from Resolution and Court Services (visit www.rcas.alberta.ca or call 1-855-738-4747) to determine which court forms you need to fill out and file for your situation.

If you are married, you can apply for exclusive possession under the *Matrimonial Property Act* or the *Family Law Act*. If you are in an adult interdependent relationship (or common law relationship), you can only apply under the *Family Law Act* and you must combine it with an application for financial support. To find forms for your situation, visit the Alberta Courts website at <https://albertacourts.ca/resolution-and-court-administration-serv/family-justice-services/family-self-help/exclusive-possession-of-property>.

When you make an application for exclusive possession of the family home, the court will consider the following factors in deciding whether to grant the application:

- What is the financial position of you and your spouse or partner?
- Are the children's needs being addressed?
- Has a court order for financial support been made?
- Has a court order for child custody or parenting been made?
- Has a court order for the distribution of matrimonial property been made?
- Is there somewhere for your spouse to move?
- Can your spouse afford to rent or buy a home?



You do not have to show evidence of family violence to get an exclusive possession order. If you are experiencing family violence, consider applying for an Emergency Protection Order or Queen's Bench Protection Order. These orders can provide you with exclusive possession of the home, household goods, pets, and vehicles, and can require your abusive spouse or partner to stop communicating with or contacting you.

How long does an exclusive possession order last?

An exclusive possession order is not a permanent order and does not allow you to keep the family home forever. The order will be issued for a fixed period of time that will depend on your situation. For example, the order may last until your divorce is finalized or until your children finish the school year.

It is important to know that while an exclusive possession order is in place, your home cannot be sold without the consent of you and your spouse or partner. To protect yourself, you can register the exclusive possession order against the title of your home. If you need help doing this, talk to a lawyer.

Help and Further Information

Lawyer Referral Service

Call 1-800-661-1095. This service is operated through the Law Society of Alberta. You will be provided with the names and telephone numbers of up to three lawyers practicing in the area of law that best suit your needs. Note: Lawyers will charge for their services.

Legal Aid Alberta's Emergency Protection Order Program (EPOP)

In Edmonton, call 780-422-9222.

In Calgary, call 403-297-5260.

In Lethbridge, call 403-388-3162.

Other areas, call 1-866-845-3425.

Community and Student Legal Clinics

Visit http://www.pbla.ca/gethelp/item.5602-Help_for_Individuals for a complete list of locations and contact information.

Government of Alberta - Resolution and Court Administration Services

Call 1-855-738-4747 or visit www.rcas.alberta.ca.

Family Violence Info Line

Available 24/7 in over 170 languages. Call 310-1818.

Victim Services Alberta

Call 780-427-3460 or visit https://www.solgps.alberta.ca/programs_and_services/victim_services/Pages/VictimServiceUnits.aspx for a list of locations and contact information.

WillowNet: Abuse and the Law in Alberta provides plain language legal information including all of the information sheets in this series: www.willownet.ca.

LegalAve provides plain language information about family law in Alberta: www.legalave.ca.



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You should not rely on this information sheet for legal advice.