

Families and the Law

Separation and Divorce



We would like to thank the **Alberta Law Foundation** and the **Department of Justice Canada** for providing operational funding, which makes publications like this possible.

**Alberta LAW
FOUNDATION**



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

Front cover photo by
cottonbro from Pexels.

Who is this booklet for?

This booklet is for people who want to know about separation and divorce in Alberta. This booklet has two sections: one for couples who are legally married and the other for couples who are not married. Each section describes the things you need to think about and do when you and your spouse or partner separate.

This booklet is one of six in a series called **Families and the Law**. The other booklets in the series may help you further understand family law in Alberta:

- New Parents
- Parenting Time and Contact
- Financial Support
- Property Division for Married and Unmarried Couples
- Resolving Family Law Disputes

Family law is complicated. Finding out about the law and your options is a very good first step. There are a lot of people and organizations who can help you. There is a list of resources at the end of this booklet.

NOTE: This booklet is based on **Alberta** law. The law may be different in other provinces.

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. The Legal Resource Centre of Alberta will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

© 2021, Legal Resource Centre of Alberta Ltd., Edmonton, Alberta

Operating as: Centre for Public Legal Education Alberta

The Legal Resource Centre of Alberta Ltd, operating as the Centre for Public Legal Education Alberta, is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations, and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referrals on many legal topics.

For more information, please visit www.cplea.ca.

Centre for
Public
cplea
Legal Education
Alberta



**Edmonton Community
Legal Centre**

Contents

4 Married Couples

- 4 The Law
- 5 Who Can Get a Divorce
- 6 Where to File for Divorce
- 7 Types of Divorces
- 8 The Divorce Process

13 Unmarried Couples

- 13 The Law
- 16 The Separation Process

20 Solving Disputes Outside of Court

22 Resources

LOOK FOR THE FOLLOWING SYMBOLS TO FIND:



Additional resources and **useful links** where you can find more information.



Definitions of some of the common terms used throughout the document.



Tips and things to consider that may apply to your situation.

Married Couples

The information in this section is for couples who are legally married in Alberta and are separating and divorcing.

The Law

In Canada, the federal government makes the law about divorce. This means that divorce law is the same all across Canada. The federal government has passed a law called the *Divorce Act*.

Usually, a divorce involves more than ending the marriage. There are often other things to think about:

- If you have dependent children, who will the children live with? How will you financially support the children? Will one of you have to pay the other child support?
- If you or your spouse cannot support yourselves, will one of you have to pay the other spousal support?
- If you own property, how will you divide this property between you?

The *Divorce Act* covers these issues except for how you will divide your property. Each province makes family laws about everything except divorce. Some things, such as child support and spousal support, are in both the *Divorce Act* and provincial family laws. Only provincial laws deal with how you divide your property. Provincial laws apply to both married and unmarried couples who are separating.

A divorce is a court order that ends a marriage. If you are married, you cannot marry someone else until you get a divorce, even if you separated from your spouse.

Married couples that have not filed for divorce in Alberta can use Alberta's **Family Law Act** to deal with matters such as child support and spousal support.

Married couples that have filed for divorce in Alberta can use the **Divorce Act** to deal with matters such as child support and spousal support.

The **Family Property Act** deals with dividing your property and debt, if you separated on or after January 1, 2020. If you separated before January 1, 2020, the old **Matrimonial Property Act** applies.

If you are using the *Divorce Act* or the *Family Property Act*, you must file your documents in the **Court of Queen's Bench of Alberta**.

Who Can Get a Divorce

Canada's *Divorce Act* says that you can only ask for a divorce if there has been a "breakdown of the marriage".

A breakdown in marriage can occur in one of three ways:

1. You and your spouse have been separated for at least one year with no chance of getting back together. The one-year period is not interrupted if you get back together for 90 days or less and then separate again. If you get back together for more than 90 days and then separate again, the one-year period will restart.
2. You or your spouse committed adultery (had sexual relations with someone else while you were still in a relationship).
3. Either spouse treats the other cruelly.

Usually getting divorced involves more than the divorce itself. It also involves parenting and support issues and dividing property. Often you cannot wait one year to deal with these issues. You can file for divorce and deal with these other issues on an interim (temporary) basis at any time after you have separated. You do not need to wait one year. You will have to be separated for one year before the court will complete the divorce.

If you and your spouse signed a pre-nuptial agreement, you should review that agreement. It may say what happens when the relationship ends.

Where to File for Divorce

You should start filing for divorce in the province where you have lived for one year before starting the application. You can file for divorce in Alberta if you have lived in Alberta for at least one year before you file for divorce.

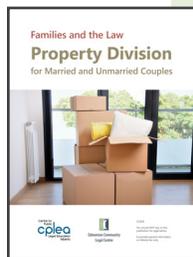
If you live in one province and your spouse lives in another province, you might each file in different provinces.

If this happens, then the following rules apply:

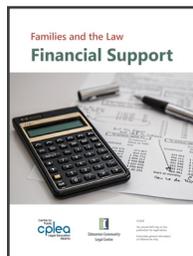
- If the divorce filed first is not discontinued (cancelled), then the second application is discontinued (cancelled).
- If the file that was filed first is discontinued, then the second continues on.
- If divorces are filed on the same day and neither is discontinued after 40 days, then either spouse can apply to the Federal Court for directions on which file should continue. The Federal Court is a different court than the Court of Queen's Bench of Alberta.



If you and your partner have children together, see the **Families and the Law: Parenting Time and Contact** booklet for more information about the laws on parenting after separation or divorce.



If you and your partner own property together, see the **Families and the Law: Property Division for Married and Unmarried Couples** booklet for more information about the laws on dividing property.



For more information about child support or spousal support, see the **Families and the Law: Financial Support** booklet.

Types of Divorces

Uncontested divorce (with or without children) is where both spouses agree to get divorced and already have written agreements or court orders dealing with parenting, property division or child and spousal support.

You can file for an uncontested divorce in two ways:

1. You and your spouse can file a **Joint Statement of Claim for Divorce**.
2. You can file a **Statement of Claim for Divorce** and your spouse does not contest (fight) it.

You usually do not have to go to court for uncontested divorce applications. This is a "**desk divorce**". Once you have filed your documents with the court, the court clerks and then a judge will look over everything. If you have filled everything out correctly and no information is missing, then a judge can grant you a divorce without you having to go to court. If you made mistakes in the documents, the court clerk will reject them and send them back to you. Once the court clerk has accepted all the documents, they will send them to the judge for review. If the judge has any concerns, they will not grant a divorce order until you have resolved the problems.

Contested divorce (with or without children) is where you and your spouse do not agree on everything. It could be that the two of you do not agree on getting a divorce, or that you do not agree on parenting, property division or child and spousal support.

If your spouse is contesting the divorce, you may have to go to court at some point. However, there are many ways to resolve issues without going to court.



Resolution and Court Administration Services

has prepared instruction sheets for filling out the documents for the following types of divorces:

- Uncontested Divorce - without children
- Uncontested Divorce – with children
- Joint Divorce – without children
- Joint Divorce – with children

You can find these instructions on the **Alberta Courts** website:
<http://bit.ly/3oJz6vQ>

The Divorce Process

The charts on the following pages show the processes for:

- a joint divorce (uncontested)
- a divorce that is *not* a joint divorce (uncontested or contested)

There are many ways to solve issues between you and your spouse without going to court. See the last section of this booklet for more information.

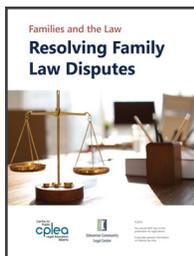
How do we divide our property?

1. Try to agree on how to divide the property between you and your spouse.
2. If you cannot come to an agreement, there are other options available without going to court. (See the last section of this booklet.)
3. If you still cannot come to an agreement outside of court, you can file a **Statement of Claim for Divorce and Division of Family Property** or **Statement of Claim for Division of Family Property** (if you have already filed for divorce) in the Court of Queen’s Bench.

If you and your spouse have property to divide, there are deadlines for filing a claim with the court to do so.

If you are:	You have this long to make a claim:
Legally married and separated but not divorced	2 years from the date of separation OR you must start divorce proceedings
Divorced	2 years from the date of the Divorce Judgment

If your spouse is:	You have this long to make a claim:
Giving away or selling family property	1 year from the date the property was sold or given away
Deceased	6 months from when the court issues a grant of probate, but only if you could have started an action right before your spouse died



For more information on going to court, see the **Families and the Law: Resolving Family Law Disputes** booklet.

When does my divorce become final?

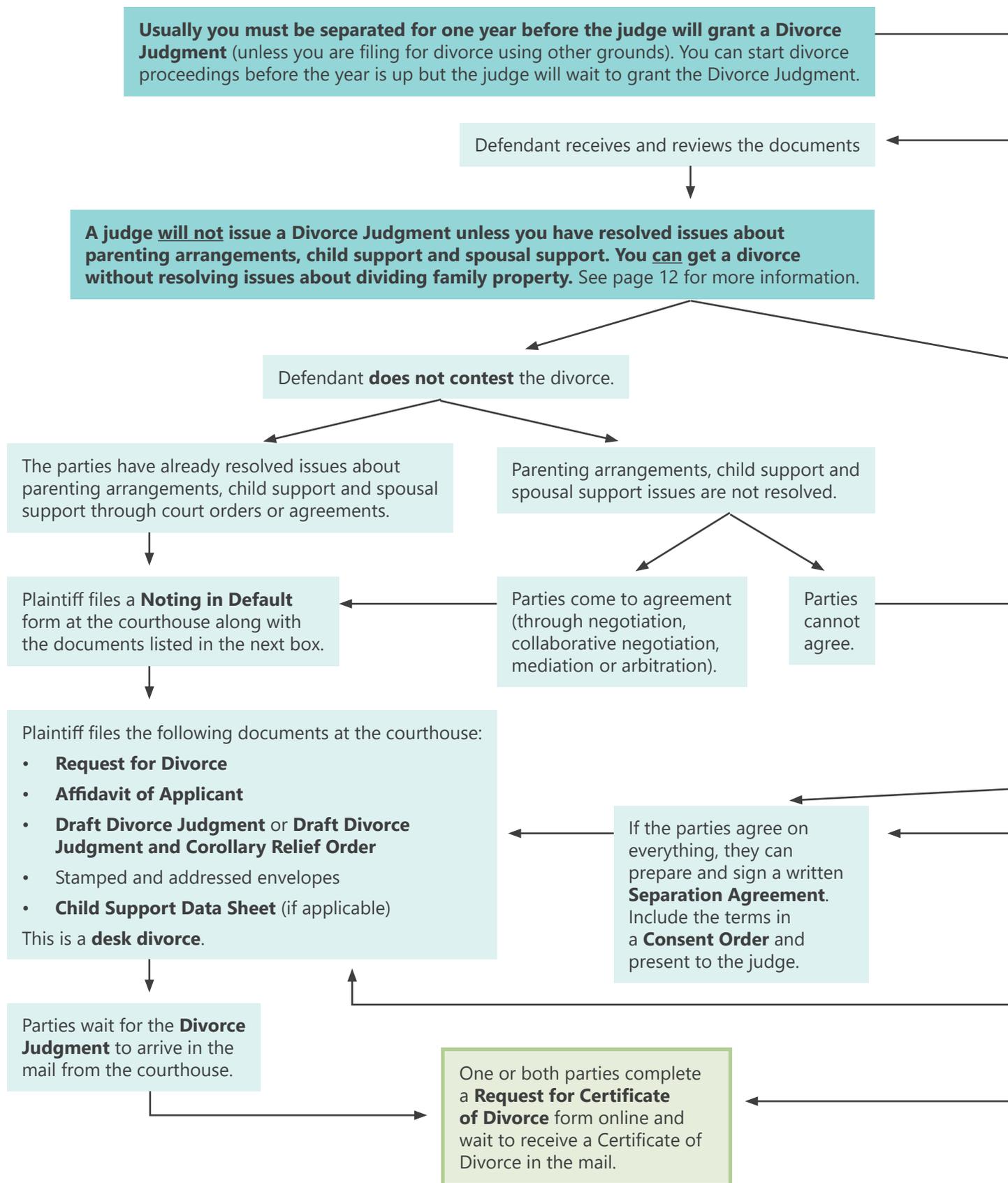
Your divorce becomes final 31 days after a judge issues your **Divorce Judgment**. Once the divorce is final, you can request a **Certificate of Divorce**. This document is effective throughout Canada. You need to keep this document in a safe place. You will need to show it to get a marriage license if you decide to get married again in the future.

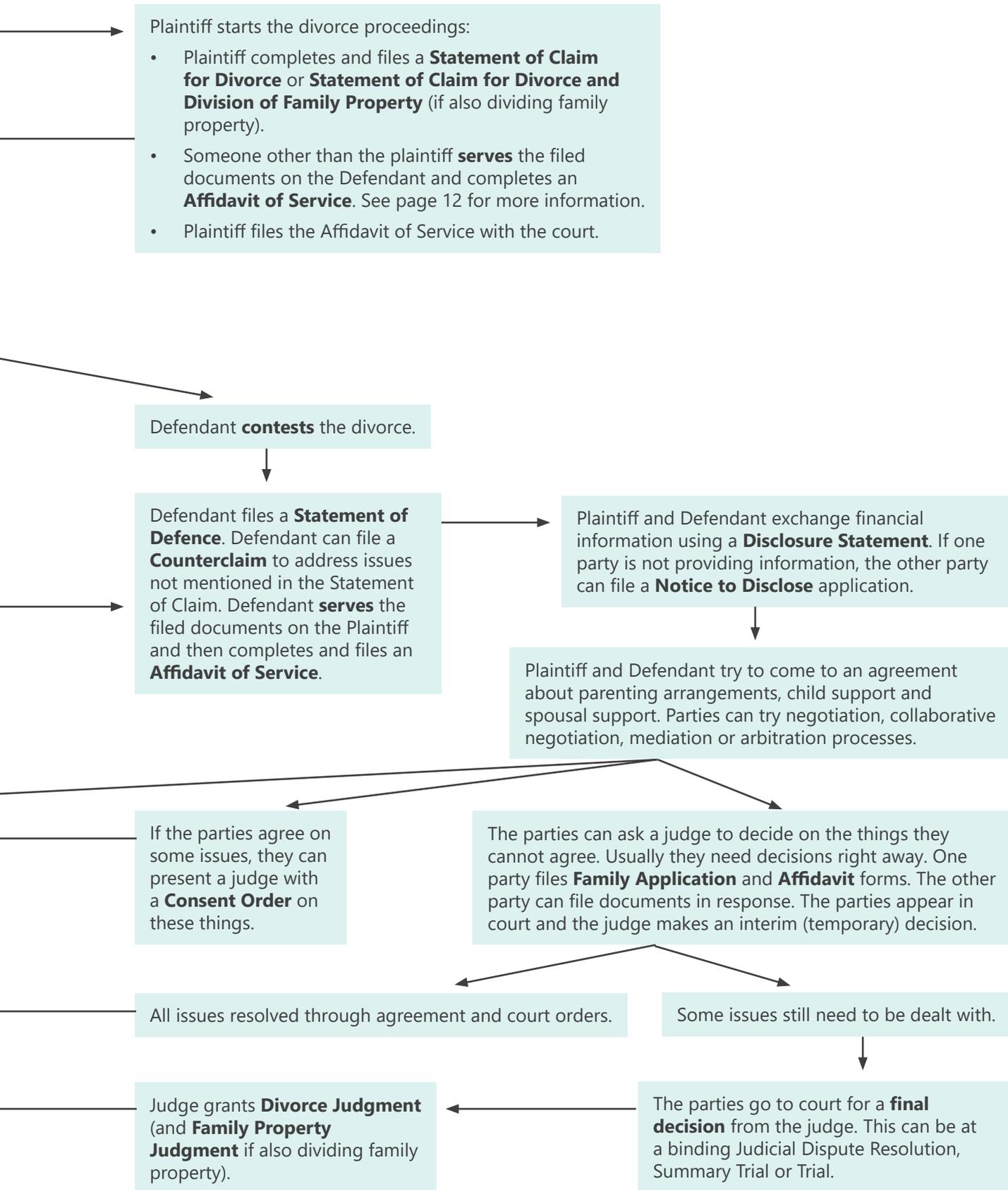
The judge can shorten this time if there is a good reason to do so and the divorcing spouses agree not to file an appeal.

PROCESS FOR GETTING A JOINT DIVORCE



PROCESS FOR GETTING A DIVORCE (THAT IS NOT A JOINT DIVORCE)







A **Consent Order** is a court order decided upon by consent between the parties and submitted to a judge for review and signature. A consent order is different from other court orders where the judge makes the final decision.



You can find more information about **Parenting After Separation** on the Alberta Government website: <http://bit.ly/3pH7Uz7>

Contact **Resolution and Court Administration Services** for a blank Consent Order document.

You can find **court forms for divorces and instructions for uncontested divorces** online at the Alberta Courts website: <http://bit.ly/3oJz6vQ>

Serving Documents

A Plaintiff cannot personally serve a **Statement of Claim for Divorce** or a **Statement of Claim for Divorce and Division of Family Property**. Someone else, such as a family member, friend or a process server, must serve these documents personally on the Plaintiff's behalf. Rule 12.55 of the *Alberta Rules of Court* lists when a Defendant must be served personally for family law actions.

<http://bit.ly/3pH8bID>

The **Affidavit of Service** must include a picture of the person served when serving a **Statement of Claim for Divorce** or **Statement of Claim for Divorce and Division of Family Property**.

Parenting Arrangements, Child Support and Spousal Support

A judge will not issue a **Divorce Judgment** unless the parties have resolved issues about parenting arrangements and child support (if you have children), and spousal support. These issues are called corollary relief. You and the other party can agree on these issues before or after starting divorce proceedings. If you cannot agree, the court will decide for you. If you have children, you must complete an online course called **Parenting After Separation** within three months of filing the Statement of Claim.

Dividing Family Property

You can get a divorce without resolving issues about dividing family property. If you file a **Statement of Claim for Divorce and Division of Family Property**, the court will deal with dividing family property during the divorce process. If you file a **Statement of Claim** without dealing with family property, the court can still grant a divorce. You have up to two years from the date of separation to apply to court to divide family property. If you start divorce proceedings during that time, the deadline to apply changes to two years after a judge grants a Divorce Judgment. For more information about dividing property, see the **Families and the Law: Property Division for Married and Unmarried Couples** booklet.

Unmarried Couples

The information in this section is for couples who are not legally married in Alberta and are separating.

The Law

If you and your partner are not legally married, no court process is required to make your separation final.

You may have other issues that the law can help with:

- If you have dependent children, who will the children live with? How will you financially support the children? Will one of you have to pay the other child support?
- If you or your partner cannot support yourselves, will one of you have to pay the other partner support?
- If you own property, how will you divide up this property?

WHICH LAW SHOULD YOU USE?

Family Law Act

- Guardianship
- Parentage
- Contact
- Child support
- Partner support (only for **adult interdependent partners**)
- Exclusive possession of the family home and household goods (if also applying for support)
- Other matters

Family Property Act

(Only for adult interdependent partners who separated after January 1, 2020)

- Division of property
- Exclusive possession of the family home and household goods

If you and your partner signed a cohabitation agreement, you should review that agreement. It may say what happens when the relationship ends.

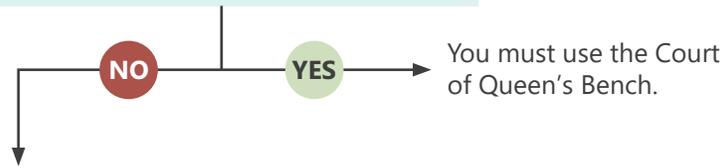


An **adult interdependent partner** is a person in an adult interdependent relationship.

An **adult interdependent relationship** is a type of relationship for unmarried people. There are certain criteria you must meet for your relationship to be an adult interdependent relationship. These criteria are set out in the *Adult Interdependent Relationships Act*. The people in an adult interdependent relationship are adult interdependent partners.

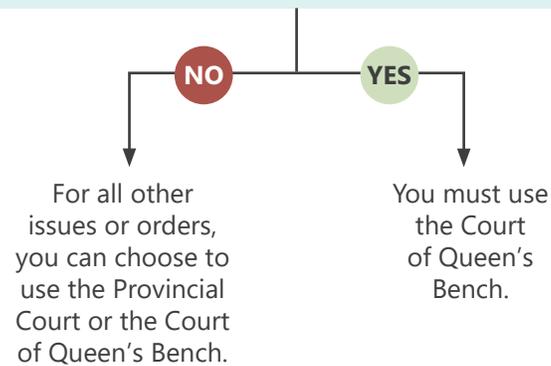
WHICH LEVEL OF COURT CAN YOU USE?

Are you applying to divide property?



Are you applying for one or more of the following?

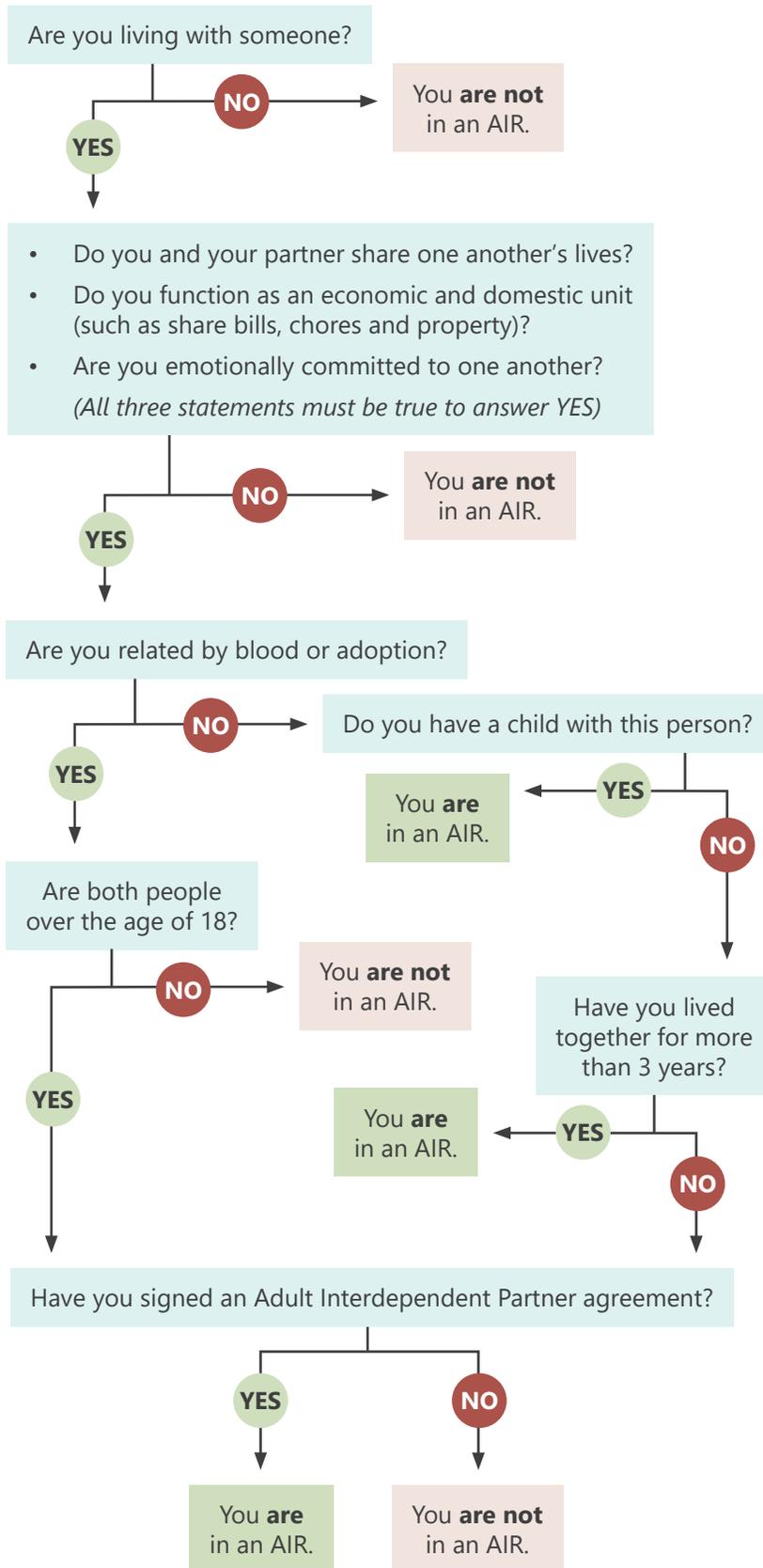
- exclusive possession of the home or household goods
- a Declaration of Parentage
- a Declaration of Irreconcilability
- direction regarding holding money in trust or dealing with real property



If you don't know if you are in an adult interdependent relationship, take the quiz on the next page to learn more.

The laws for partner support and property division only apply to adult interdependent partners and married couples, not to other unmarried couples.

ARE YOU IN AN ADULT INTERDEPENDENT RELATIONSHIP?



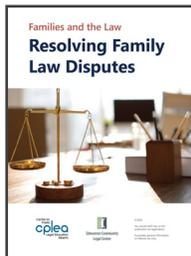
AIR = Adult Interdependent Relationship.

The Separation Process

Even though there is no formal process to end your relationship, there are documents you can sign that state your relationship is over. There may also be other family issues that you need to deal with.

THINGS TO THINK ABOUT WHEN SEPARATING

- Separation Agreement
- Declaration of Irreconcilability
- Division of Property
- Parenting Arrangements
- Financial Support



For more information on going to court, see the **Families and the Law: Resolving Family Law Disputes** booklet.

Separation Agreement

You and your partner can make and sign a Separation Agreement.

A Separation Agreement can cover many things, including:

- stating that your relationship is over
- how you and your partner will parent your children
- if child support or partner support is paid, by whom and how much
- how you will divide property owned by you and your partner

You should have a lawyer review the agreement before you sign it to make sure that it is valid and enforceable, and that you understand your rights. You and your partner will have to meet with separate lawyers.

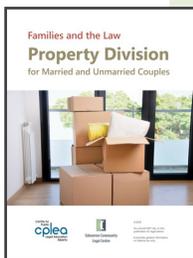
Declaration of Irreconcilability

You or your partner can apply to the court for a declaration of irreconcilability. This is a declaration by the court that you and your partner will never reconcile with each other.

Division of Property

Under the *Family Property Act*, adult interdependent partners have the same rights as spouses when it comes to dividing property.

The *Family Property Act* only applies to adult interdependent partners who separate on or after January 1, 2020. For adult interdependent partners who separated before January 1, 2020, different laws apply.



If you and your partner own property together, see the **Families and the Law: Property Division for Married and Unmarried Couples** booklet for more information about the laws on dividing property.

HOW TO DIVIDE YOUR PROPERTY

1. Try to agree on how to divide the property between you and your partner.
2. If you cannot come to an agreement, there are other options available without going to court. (See the last section of this booklet.)
3. If you still cannot come to an agreement, you can file a **Statement of Claim for Division of Family Property** in the Court of Queen's Bench.



A declaration of irreconcilability is made under section 83 of the *Family Law Act*.

The family law forms are available on the **Alberta Courts** website:
<http://bit.ly/3rc9Klq>

You can contact **Resolution and Court Administration Services** for help locating the proper forms and with the general court process. See the Resources section of this booklet for contact information.



An **Adult Interdependent Partner Agreement**

is a formal document that two people sign saying they are in an adult interdependent relationship. The agreement must be in the form provided in legislation called the *Adult Interdependent Partner Agreement Regulation*.



You can find a copy of the *Adult Interdependent Partner Agreement Regulation* by going to www.qp.alberta.ca and searching for it.

WHAT ARE THE TIMELINES TO DIVIDE PROPERTY?

If you and your partner have property to divide, there are deadlines for applying to the court to do so.

If you are:	You have this long to make a claim:
In an adult interdependent relationship and separated	2 years from the date when you become former adult interdependent partners

If your partner is:	You have this long to make a claim:
Giving away or selling family property	1 year from the date the property was sold or given away
Deceased	6 months from when the court issues a grant of probate, but only if you could have started an action right before your adult interdependent partner died

FORMER ADULT INTERDEPENDENT PARTNERS

You and your partner become former adult interdependent partners when one of the following happens first:

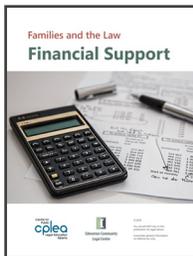
- You and your partner live separate and apart for one year, and one or both of you intend that the relationship is over.
- One of you marries someone else.
- You and your partner make a written agreement that says the relationship is over, that you intend to live separate and apart, and that there is no possibility of reconciliation. You can make this agreement even if you did not make an **Adult Interdependent Partner Agreement**.
- You or your partner enter into an Adult Interdependent Partner Agreement with someone else (this applies where you were in an adult interdependent relationship but did not sign an Adult Interdependent Partner Agreement).
- One or both of you get a declaration of irreconcilability under the *Family Law Act*.

Parenting and Support

You and your partner can try to come to an agreement on issues such as a parenting plan, child support and partner support. If you cannot, you can file a **Claim – Family Law Act** form to get the court’s help in dealing with one or more of these issues.



If you and your partner have children together, see the **Families and the Law: Parenting Time and Contact** booklet for more information about the laws on parenting after separation or divorce.



For more information about child support or partner support, see the **Families and the Law: Financial Support** booklet.



You can contact **Resolution and Court Administration Services** for assistance locating the proper forms and the court process generally. See the Resources section of this booklet for contact information.

Solving Disputes Outside of Court

There are many ways to solve a dispute without going to court. Going to court may be necessary if you cannot agree with the other person about your separation or divorce, or on other related issues such as parenting, child support and property division. Court should be a last resort.

WAYS TO RESOLVE A DISPUTE

Do-It-Yourself Agreement

You and the other person can work together to come up with an agreement. You should write down what you both agree to. Working together saves you time and money and gives you more control over the decisions you need to make. It is a good idea for each of you to talk to a lawyer independently to find out if the agreement is fair and legally enforceable.

You and the other person can present the agreement to a judge as a **consent order**. Once the judge signs the order, the agreement becomes a court order. This means that you can enforce it if the other person is not following the agreement.

Mediation

A mediator helps you work together to come up with a plan that works for everyone. A mediator should be a neutral person and should not take sides. A mediator won't force an agreement on you but can help you come up with an agreement that you both accept.



A **consent order** is a court order decided upon by consent between the parties and submitted to a judge for review and signature. A consent order is different from other court orders where the judge makes the final decision.

Arbitration

An arbitrator is a person the parties appoint to make a decision instead of a judge. You can choose someone who is very experienced in family law issues.

Mediation-Arbitration

Combining mediation and arbitration, a mediator has the power to make a binding decision (as an arbitrator) if the parties cannot reach an agreement.

Collaborative Processes

This is a type of negotiation where each person has their own lawyer but everyone works together to come up with solutions. Everyone signs an agreement saying they will all work together and no one will go to court. Most of the communication occurs in four-way meetings, with both sides and their lawyers present. Everyone is encouraged to be honest and openly share information.

Do I need a lawyer to help me?

You do not need to retain a lawyer to help you when you separate or divorce but it may be helpful. A lawyer can help guide you through the process, negotiate on your behalf, represent you in court, and advise you on your rights and options. A lawyer can help you solve issues without going to court, such as making your own agreement, mediation or arbitration.



There are lots of private mediators, arbitrators and collaborative lawyers. See the Resources section of this booklet for more information.



A **limited scope retainer** is an arrangement where a lawyer provides legal services for part but not all of your legal matter. You and the lawyer will agree ahead of time which parts they will do. Find a lawyer who will coach you or provide limited services at **Alberta Legal Coaches & Limited Services**.
<https://albertalegal.org/>

If you have children and one parent makes less than \$40,000 per year, you might qualify for **Family Mediation** through Resolution and Court Administration Services (RCAS):
<http://bit.ly/36SIEQf>

Resources

LEGAL SERVICES

Law Society of Alberta Lawyer Referral Service

Provides names of three lawyers. Each lawyer to provide half-hour consultation free of charge.

Toll-free: 1.800.661.1095

www.lawsociety.ab.ca/public/lawyer-referral/

Legal Aid Alberta

Toll-free: 1.866.845.3425

www.legalaid.ab.ca

Edmonton Community Legal Centre (ECLC)

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

www.eclc.ca

Student Legal Services (SLS)

Legal clinic in Edmonton. Call for hours and eligibility.

780.492.2226

www.slsedmonton.com/

Calgary Legal Guidance (CLG)

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<http://clg.ab.ca>

Student Legal Assistance (SLA)

Legal clinic in Calgary. Call for hours and eligibility.

403.220.6637

<https://slacalgary.com/>

Community Legal Clinic – Central Alberta

Legal clinics in Central Alberta. Call for hours and eligibility.

Central Alberta: 403.314.9129

Fort McMurray: 587.674.2282

Lloydminster: 587.789.0727

Medicine Hat: 403.712.1021

www.communitylegalclinic.net

Grande Prairie Legal Guidance

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

www.gplg.ca

Lethbridge Legal Guidance

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

www.lethbridgelegalguidance.ca/

Alberta Legal Coaches & Limited Services

List of lawyers offering legal coaching and limited scope retainers.

<https://albertalegal.org/>

Association des juristes d'expression française de l'Alberta

Centre albertain d'information juridique.

780.450.2443

www.ajefa.ca/

GOVERNMENT & COURT SERVICES

Provincial Court – Family

<https://albertacourts.ca/pc/areas-of-law/family>

Court of Queen’s Bench – Family

<https://albertacourts.ca/qb/areas-of-law/family>

Resolution and Court Administration Services (RCAS)

Resolution and court support services across Alberta.

1.855.738.4747

www.alberta.ca/rcas.aspx

Family Court Assistance

Edmonton Family Court Counsellors: 780.427.8343

Calgary Family Court Counsellors: 403.297.6981

www.alberta.ca/family-court-assistance.aspx

Family Mediation

Government of Alberta mediation service for low income Albertans. Offices in Edmonton and Calgary.

Calgary: 403.297.6981

Edmonton: 780.427.8329

Elsewhere in Alberta: 403.355.2414

www.alberta.ca/family-mediation.aspx

OTHER RESOURCES

Alberta Law Libraries

Help with finding legal information. Locations across the province.

<https://lawlibrary.ab.ca/>

Alberta Family Mediation Society

Roster of family mediators.

Toll-free: 1.877.233.0143

<https://afms.ca/>

Arbitrations in Alberta

Find a family law arbitrator in Alberta.

<https://divorcearbitrations.ca/>

ADR Institute of Alberta

Roster of mediators and arbitrators.

Toll-free: 1.800.232.7214

<https://adralberta.com>

Collaborative Divorce Alberta Association

Directory of Collaborative Divorce professionals.

<https://collaborativepractice.ca/>

LawNow Magazine – Family Law Column

Recent articles on family law issues.

www.lawnow.org/category/columns/familylaw

Families and the Law

Separation and Divorce



info@cplea.ca

www.cplea.ca



Edmonton Community
Legal Centre

intake@eclc.ca

www.eclc.ca