

Court of King's Bench

Joint Divorce – Civil Marriage Act



Resolution Services



Alberta
Government

This booklet has been prepared for you by the staff at Resolution Services. You can reach us at:

Calgary

Calgary Courts Centre
1st Floor, 601 - 5 Street SW
Calgary, AB T2P 5P7
Phone: 403-476-4744

CalgaryResolutionSupportCentre@just.gov.ab.ca

Edmonton

John E. Brownlee Building
Room 8124 - 8th Floor,
10365 - 97 Street NW
Edmonton, AB T5J 3W7
Phone: 780-415-0404

InfoServices.Edmonton@just.gov.ab.ca

Grande Prairie

Grande Prairie Court House
10260 - 99 Street
Grande Prairie, AB T8V 2H4
Phone: 780-833-4234

GrandePrairieLInc@just.gov.ab.ca

Lethbridge

Lethbridge Court House
320 - 4 Street S
Lethbridge, AB T1J 1Z8
Phone: 403-388-3101

RS.Lethbridge@just.gov.ab.ca

Medicine Hat

Medicine Hat Law Courts
460 - 1 Street SE
Medicine Hat, AB T1A 0A8
Phone: 403-529-8715

ResolutionServices.SouthernAlberta@just.gov.ab.ca

Red Deer

Red Deer Justice Centre
Main Floor, 4810 - 48 Avenue
Red Deer, AB T4N 5L6
Phone: 403-754-3182

RDDRIInfoService@just.gov.ab.ca

Outside these centres, contact us toll free at 1-855-738-4747.

Resolution Services and Court Staff cannot give you legal advice or predict the outcome of your case.

This booklet provides general information only. You should speak to a lawyer for legal advice about your own situation.

JOINT DIVORCE – Civil Marriage Act

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INSTRUCTIONS: JOINT DIVORCE – Civil Marriage Act

BEFORE YOU BEGIN

Disclaimer:

These are meant to be simple, straightforward instructions for completing a divorce on your own. There may be other ways of completing the divorce. If you want to find out if there is a different way than what is written here, or if you want any more information than what has been given, talk to a lawyer.

In these instructions, we often tell you to ask questions or get forms from the Resolution Support Centre. If there is no Resolution Support Centre in your court, ask the King's Bench Clerks for the information or forms.

The *Civil Marriage Act* (Canada) provides a process to allow the court in the Canadian province/territory where the marriage was performed to grant a divorce to non-resident spouses who reside in a jurisdiction where a divorce cannot be granted to them, because that jurisdiction does not recognize the validity of their marriage (either a same sex or opposite sex marriage).

Under the Civil Marriage Act, an application for divorce can be made:

- by both spouses jointly,
- by one spouse, with the other spouse's consent,
- by one spouse, without the other spouse's consent, if the spouse making the application presents a court order from the state where one of the spouses resides, or from the Alberta Court, declaring that the other spouse:
 - 1) is incapable of making decisions about their civil status because of a mental disability,
 - 2) is unreasonably withholding consent, or
 - 3) cannot be found.

Were you married?

If you were living “common law”, then you do not need to do anything through the courts to end your relationship. It is only if you went through an official wedding ceremony that you need to get a divorce.

To request a divorce from the courts in Alberta under the *Civil Marriage Act*, you must have been married in Alberta. If you were married in another Canadian province, then you must contact the courts in that province to find out the process to obtain a divorce.

Do either you or your spouse live in a jurisdiction that does not recognize your marriage as being valid?

To request a divorce from the courts in Alberta under the *Civil Marriage Act*, you and your spouse must each live in a jurisdiction that does not allow you to get a divorce, because the jurisdiction does not recognize your marriage as valid. If either spouse resides in Canada, then you cannot apply for a divorce under the *Civil Marriage Act*.

Do you have the correct marriage certificate?

If you were married in Canada, you need the marriage certificate that was issued by the province after your marriage. If you have a handwritten certificate that was given to you at the time of your wedding, that is likely not the right one. If you were married in Alberta, you can order a marriage certificate from any registry office. If you were married in another province, search “marriage certificate” on the government home page for that province.



Tip: Most people do not receive a marriage certificate from the government unless they go through the process of ordering one. It is not sent automatically after the marriage ceremony ie. if the marriage was registered in Alberta, one must be ordered from the Alberta Registries.

If you were married outside Canada, an official marriage certificate is helpful but not required.

Have you and/or your spouse lived in Alberta for at least a year?

If not, you can't file for divorce in Alberta. You will be able to file once you (or your spouse) have lived in Alberta for a year.

Do you have grounds for divorce?

The grounds for a joint divorce are living separate and apart for one year.



Tip: You can start the divorce before the year of separation is up, but you can't ask for the Divorce Judgment until after the year is up.

**Do not use correction tape/white out on your court documents.
If you make an error, you may cross out and initial the changes.**



Tip: Use the Divorce Check sheet on the next page of these instructions for a handy summary of the forms and photocopies you will need.

DIVORCE CHECKSHEET

☐ JOINT STATEMENT OF CLAIM FOR DIVORCE..... (\$310.00 filing fee)

☐ JOINT REQUEST FOR DIVORCE (without oral evidence)

☐ REVIEW MEMO - ATTACH TO AFFIDAVIT OF APPLICANTS

☐ JOINT AFFIDAVIT OF APPLICANTS

☐ DIVORCE JUDGMENT (without oral evidence)

- **Divorce Judgment MUST BE TYPED.** Handwritten corrections, edits, or changes are not acceptable.
- Link: <https://www.albertacourts.ca/kb/home/notice-to-the-profession-public---handwritten-divorce-judgments>

☐ REQUEST FOR CERTIFICATE OF DIVORCE

Note: Under the *Civil Marriage Act*, a divorce action cannot be combined with a claim for other relief such as spousal support, child support, parenting time and/or decision-making decisions for children. Only a divorce judgment can be granted by the Court.

Where can I download the form?

<https://albertacourts.ca/kb/areas-of-law/family/divorce-forms/divorce-under-cma>

COMPLETING THE JOINT STATEMENT OF CLAIM FOR DIVORCE

Court File number

Leave this blank for now. When you file the Joint Statement of Claim for Divorce, the clerk will give you a court file number.

Judicial Centre

This is the Court of King's Bench location where you will be filing your documents.

Spouse 1 and Spouse 2

Decide now which of you will be called "Spouse 1" and which will be "Spouse 2". You will keep this label in all the forms.

Look at your marriage certificate. Use the names exactly as they are on the marriage certificate except that if Spouse 1 has taken Spouse 2 last name, you can use their married last name. The format in writing the name is: First Name, Last Name and other given name(s).

For example, the marriage certificate lists you as John Edward Kerry and Jane Amanda Fraser. Jane goes by Jane Kerry. You will list yourselves as John Edward Kerry and Jane Amanda Kerry **OR** Jane Amanda Fraser also known as Jane Amanda Kerry.



Tip: Whenever there is a space to write in any names on any of the forms, write in the full name.

Address for Service and Contact Information

Write in both parties' names, complete addresses, including postal code, daytime phone numbers, and email addresses.

#1: The Parties

Make sure the date and place of the marriage are the same as on your marriage certificate.

1(3) and 1(4)

- Address means the complete address, including postal code.
- Surname at birth means the last name at the time of birth.
- Surname at the time of marriage means the last name just before your marriage took place.
- Marital status of the parties at the time of the marriage would be one of "single", "divorced" or "widowed".

#2 & 3: Residence

One of you MUST have lived in Alberta for one full year before you file the Statement of Claim. If you have not, you must wait. Choose either Spouse 1 or Spouse 2 here.

#4 Grounds

Do not write anything here.

#5 Reconciliation

Do not write anything here. If you believe there IS a possibility of reconciliation, then you should not file for divorce.

#6 Bars to Divorce

Do not write anything here.



Tip: "Collusion" means agreeing with your spouse to make up facts so that you can get your divorce or get divorced sooner.

#7 Court Proceedings

Add all other details.

#8 Remedy Sought

Keep box checked. Do not write anything more here.

FILING THE JOINT STATEMENT OF CLAIM FOR DIVORCE

Print out the form.

Make 2 copies (original + 2 copies)



Tip: Make sure all your pages have print only on one side (no double-sided printing or copying!)

One or both of you can come to courthouse to file the Joint Statement of Claim for Divorce. Bring all your copies, plus \$310.00 (cash, debit, or credit cards) and your marriage certificate to the Court of King's Bench. In larger centres there will be a specific registry counter for filing divorce documents.

The clerk will file your Joint Statement of Claim for Divorce and return the filed (stamped) copy to you. Each of you must keep a filed copy for future reference.



Tip:

It is possible, so long as you have been separated for more than one year, to complete all the forms and file them with the Court at the same time. If you want to do this, complete the forms up to the end of page 26 before coming to the courthouse for filing.

COMPLETING THE JOINT REQUEST FOR DIVORCE

Court File Number
Judicial Centre
Spouse 1
Spouse 2



These are all the same as
in the Joint Statement of
Claim for Divorce

Address for Service and Contact Information

Write in your names, complete addresses, including postal code,
daytime phone numbers, and email addresses.

Print out the form and sign it.

COMPLETING THE JOINT AFFIDAVIT OF APPLICANTS FOR DIVORCE



Tips:

- You may want to use the Word version on the King's Bench website: <https://albertacourts.ca/kb/areas-of-law/family/divorce-forms/divorce-under-cma>
- Fill out all the parts of this form, unless the instructions tell you otherwise.

Court File Number
Judicial Centre
Spouse 1
Spouse 2

These are all the same as
in the Joint Statement of
Claim for Divorce

Address for Service and Contact Information

Write in your names, complete addresses, including postal code, daytime phone numbers, and email addresses.

Affidavit of

Fill in both names.

Sworn on

Fill this in after you swear the Joint Affidavit of Applicants for Divorce.

Introductory paragraph of Affidavit:

Fill in your names and cities/towns of residence.

#1: Parties

Fill in the complete addresses of both parties

#2 & 3: Marriage

Enter the date and place of your marriage.

Attach to this Affidavit and marked as Exhibit 'A' your Certificate of Marriage issued by the Province of Alberta.



Tips: You must attach the original marriage certificate (as you received it from the provincial government office), not a photocopy.

***Tips:***

- If your marriage certificate is not in English or French, you will have to have it translated by a person who will swear before a Commissioner for Oaths that they have properly translated it into English. Attach the translation of the marriage certificate as Exhibit "B".

#4 & 5: Residence

Do not write anything here.

#6: Grounds

Fill in the date that you separated and city/town/country of separation (must be more than one year ago!

#7: Bars to Divorce

Do not write anything here.



Tips:

#6 refers to one of the "Bars" to divorce. It talks about making an agreement to deceive the court. An example of this would be if you and your spouse had only recently separated but agreed to lie to the court and say that you had been separated for a year.

If #6 is not true, the judge will not grant the divorce, and you should talk to a lawyer before going any further.

#8: Reconciliation

Do not make any changes.

#9: Statement of Claim for Divorce

Check one box only. Either the first box if the information is correct **or** the second box and specify what corrections are required.

#10: Relief Requested

Check off the items that you want. In most cases, you should check off at least:

- ☒ a divorce judgment,
- ☐ other: _____

Print off the form.

Put the Joint Affidavit of Applicants for Divorce together as follows:

- All pages of the Affidavit
- Your marriage certificate, taped onto a plain piece of paper
- The English translation of the marriage certificate (if applicable)
- Copies of orders (if applicable)

The documents attached to your Joint Affidavit of Applicants for Divorce will be marked as Exhibits "A", "B", etc.

Wait to sign your Affidavit in front of a Commissioner for Oaths. The Clerk at the Court of King's Bench Divorce Counter or the staff at Resolution Services can act as a Commissioner for Oaths for you.

COMPLETING THE DIVORCE JUDGMENT (without oral evidence)

Court File Number

Judicial Centre

Spouse 1

Spouse 2

All the above information is the same as the Joint Statement of Claim for Divorce.

Address for Service and Contact Information

Write in both of your names, complete addresses, including postal code, daytime phone numbers, and email addresses.

Date on which Judgment is granted.

Leave blank

Location of Hearing or Trial

Leave Blank

Name of Judge who granted...

Leave Blank

Introductory paragraphs (also called the Preamble)

Fill in the names of both parties.

IT IS HEREBY ADJUDGED

#1: Fill in the date of your marriage and the place (city).

If consented to, both parties must complete their own Affidavit of Execution with a witness. Attach these to the Divorce Judgment.

FILE THE REQUEST FOR DIVORCE AND SUPPORTING DOCUMENTS

Bring your completed documents to the courthouse:

- ☐ Completed "Checklist for Filing of Desk Divorce Packages" (can be found at the end of this instruction).
- ☐ Joint Request for Divorce
- ☐ Joint Affidavit of Applicants for Divorce.
- ☐ Divorce Judgment ***MUST BE TYPED***

The clerks will return all the filed documents to you, except the Divorce Judgment. Each of you needs to keep a copy of the filed documents for future reference.

Your divorce package will then be reviewed. This may take more than a month.

If you have made mistakes, your divorce will be rejected, and you will be told what to correct. You will have to correct the mistakes, then re-submit the corrected documents. Do not feel bad if your documents are rejected, as this is a common occurrence within the application process.

If the paperwork is all correct, a Justice will sign the Divorce Judgment.

You will receive the Divorce Judgment in the mail or by email.

ONLINE REQUEST YOUR CERTIFICATE OF DIVORCE

Wait 31 days from when the Divorce Judgment was granted, then you may request the Certificate of Divorce using the following web-based form:

<https://albertacourts.ca/kb/areas-of-law/family/divorce-forms/certificate-of-divorce---request-form>.

Court File Number
Court Location
Names of Both Parties



These are all the same as
in the Joint Statement of
Claim

Indicate why you need the Certificate of Divorce. Select the appropriate "Reason for Request."

Select the number of copies required.

Your Name, Address, Phone and Email

Write in your name, complete address (including postal code), daytime phone number, and email address.



Tips:

- You will need this Certificate if you want to re-marry.
- If you are unable to complete the online request form, you may be able to get a paper request from the King's Bench clerks
- If urgent, it may be faster to appear in-person at the Judicial Centre which the Divorce was granted.

Click "Submit"

DESK DIVORCE PACKAGE CHECKLIST REQUIREMENT & MAILING /

EMAILING OF DIVORCE JUDGMENTS

<https://albertacourts.ca/kb/resources/announcements/desk-divorce-package-checklist>

Please keep all your filed Divorce documents for future reference.

YOU ARE FINISHED!

