

Desk Divorce With No Dependent Children

Court of Queen's Bench

Desk Divorce With No Dependent Children



Resolution Services



Alberta
Government

**These instructions have been prepared for you by
Resolution Services. Contact us at:**

Calgary

7th floor, Calgary Courts Centre
601 - 5 Street SW
Phone 403-297-6981

Edmonton

8th floor, Brownlee Building
10365 – 97 Street
Phone 780-415-0404

Grande Prairie

Main Floor, Court House
10260 - 99 St.
Phone: 780-833-4234

Lethbridge

1st Floor, Court House
320 - 4 St. S
Lethbridge AB T1J 1Z8
Phone: 403-388-3102

Red Deer

Main Floor, Court House
4909 - 48 Ave
Phone: 403-340-7187

Medicine Hat

Court House
460 First Street SE
Medicine Hat, AB T1A 0A8
Phone 403-529-8716

**Outside these centres, call the
Resolution Services Contact Centre 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.***

DESK DIVORCE – NO DEPENDANT CHILDREN

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INSTRUCTIONS: UNCONTESTED DIVORCE WITH NO CHILDREN

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 Family Justice Services – Family Law Information office. If there is no Family Justice Services office or Family Law Information Centre in your court, ask the Queen’s Bench clerks for information or forms.

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. This may have been in Canada or outside of Canada.

Do you know where your spouse is?

Your spouse will have to be served with the initial divorce documents. If you can’t find them to serve them, you should think about hiring a lawyer to do your divorce.

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 hand-written 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.

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 divorce in Canada are:

- Living separate and apart for one year
- Adultery - i.e. your spouse having sexual intercourse with a person other than you. Your spouse must be willing to sign an Affidavit admitting adultery.
- Mental or Physical cruelty of such a nature as to make it impossible to continue living together.



Tips:

- If you are using one year separation grounds, you can start the divorce before the year is up, but you can't ask for the Divorce Judgment until after the year is up.
- Use the Divorce Checksheet at the end of these instructions for a handy summary of the forms and photocopies you will need.

COMPLETING THE STATEMENT OF CLAIM

(www.albertacourts.ab.ca/forms/CTS3823.pdf)

Court File number

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

Judicial Centre

This is the court location where you will be filing your documents. Use the drop down menu to choose the location.

Plaintiff and Defendant

You are the Plaintiff. Your spouse is the Defendant

Look at your marriage certificate. Use the names exactly as they are on the marriage certificate except that if the wife has assumed the husband's last name, you can use her married last name.

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.



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

The address that you enter here is called your "address for service" because by listing this address, you are saying to the other person that you can be served with court documents at this location. If the Defendant wants to serve you with documents responding to your Statement of Claim, they can serve you by leaving the documents at this address – they do not have to personally serve you.

Most self represented parties will use their home address as their address for service. If you want to use another address, make sure the person who lives at that address knows that documents may be left there for you.

Write in your name, the complete address for service, including postal code and daytime phone number.

#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 Residence

You and/or your spouse 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 Plaintiff or Defendant here.

#3 Grounds

Choose your grounds for divorce. You can choose more than one.

#4 Reconciliation

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

#5 Bars to Divorce

If you are using grounds of one year separation, do not do anything here. If you are using grounds of adultery or cruelty, check off the box at #5(2).



Tips:

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

"Connived" means tricking your spouse into committing adultery or cruelty.

"Condoned" means forgiving your spouse for committing adultery or cruelty.

#6 Children

6(1) In the line for the first child, write in "There are no children of the marriage" or if there are children, but they are all grown, write "There are no dependant children of the marriage".

Do not fill in any more of #6

#7 Agreements

If you have an agreement, provide the type of agreement (e.g. Separation Agreement) and the date it was signed. If there is no agreement, say "none"

#8 Court Proceedings

If you have been to court to deal with spousal support, state the type of order that was made and the Court and date (e.g. Spousal Support Order made by the Provincial Court of Alberta on June 6, 2006). If you have not been to court, say "none".

#9 Spousal Support

Check off one or more of the boxes and fill in the reasons.

#10 Remedy Sought

This is a summary of what you are asking for. Make sure to include "divorce judgment".

Statement of Solicitor

You do not have to fill this in if you are representing yourself

FILING THE STATEMENT OF CLAIM

Print out the form.

Make 2 copies (original + 2 copies)



Tip:

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

Bring all of your copies, plus \$260 (cash, Interac, Visa or Mastercard) to the Court of Queen's Bench. In larger centres, there will be a specific registry counter for filing divorce documents.

The clerk will keep your original Statement of Claim, and will show you how to stamp and write the file number on your copies. Take the 2 filed copies with you.

SERVING THE STATEMENT OF CLAIM

The Statement of Claim must be personally served (i.e. handed to the Defendant) by someone over the age of 18. You cannot serve the Defendant yourself.

If it will be difficult or impossible to serve the Defendant personally, you can ask the court for an Order for Substitutional Service. Ask the staff at the Family Justice Services – Family Law Information counter for the forms and instructions to apply for this kind of order.

If the Defendant lives outside Canada, you must ask the court for an Order allowing you to serve them outside Canada. Ask the staff at the Family Justice Service – Family Law Information counter for the forms and instructions to apply for this kind of order.



Tip:

- We strongly recommend that you hire a process server to serve your Statement of Claim on your spouse. The process server will ensure that service is done properly, and will give you a completed, sworn Affidavit of Service. You can find a list of process servers in your yellow pages or by searching “process server alberta” on the internet.

Give the process server:

- One filed copy of the Statement of Claim.
- A photograph of the Defendant. Put an “X” on the photo to identify the Defendant.
- Information about how to find the Defendant.

If you are not hiring a process server, here are important points to remember:

- Give the person who will be serving one filed copy of the Statement of Claim and the photograph of the Defendant.
- The person serving must ask the Defendant if they are the person named (e.g. “Are you John Dennis Barker?”) and use the photo to make sure they are serving the right person.
- To serve, the Statement of Claim must be **HANDED TO** the Defendant.
- The person who serves should make a note of the **date** that they served and the **address** where the Defendant was served.
- The person who serves must go to the Commissioner for Oaths to have the Affidavit of Service sworn.

COMPLETING THE AFFIDAVIT OF SERVICE

(www.albertacourts.ca/forms/cts3694.pdf)

If you have hired a process server, they will complete the Affidavit of Service for you. If not, follow these instructions.

Court File Number
Judicial Centre
Plaintiff
Defendant



These are all the same as
in the Statement of Claim

Address for Service and Contact Information

Write in your name, complete address, including postal code and daytime phone number (not that of the person who served).

Affidavit of

Fill in the name of the person who served.

Sworn on

Fill this in after the Affidavit of Service is sworn, then use that date.

Introductory paragraph of Affidavit:

Fill in the name, occupation and city and province of residence of the person who served.

#1

Fill in the date that the Statement of Claim was served, the Defendant's name, the date that the Statement of Claim was filed, the Defendant's name again and the address at which the person served the Defendant.

Print off the form. Put the document together like this:

- The Affidavit of Service
- The photograph, taped on to a plain piece of paper. The photograph is marked as Exhibit "A".

The Clerks and Family Justice Services staff have stamps to mark exhibits. If you are having the Affidavit sworn elsewhere, mark it like this:

<p>This is Exhibit "____" in the Affidavit of ____ sworn before me this ____</p> <p>_____</p> <p>A Commissioner for Oaths in and for the Province of Alberta</p>
--

Fill in the first blank with
the exhibit letter, the
second with the name of
the person who served
and the third with the
date sworn.

The person who served must have the Affidavit of Service sworn before a Commissioner for Oaths.

Make one copy of the complete Affidavit of Service, including the photograph. Copy it AFTER it has been sworn.



Tips:

- If the Defendant was served in Alberta, they have 20 days to respond to the divorce if they do not agree with the relief you are asking for.
 - If they were served elsewhere in Canada, they have one month.
 - If they were served outside Canada, they have two months.
- If they have not responded within the time period, you can go ahead with the other court forms.
- If they do respond by filing a Statement of Defence or Demand of Notice, you can still go ahead with the other court forms, but you will have to have the Defendant sign their consent on the forms. If they are not willing to consent, you should talk to a lawyer.

COMPLETING THE NOTING IN DEFAULT

(www.albertacourts.ca/forms/cts3784.pdf)

Wait the number of days set out above to allow the Defendant to contest the divorce, if they want to.

Court File Number
Judicial Centre
Plaintiff
Defendant



These are all the same as
in the Statement of Claim

Document

Beside the words "Noting in Default of", fill in the Defendant's name, and the word "Defendant".

Address for Service and Contact Information

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

In the body of the form, on the first line, type in your name and the word "Plaintiff", then on the third line, type in the Defendant's name and the word "Defendant".

In the first spot with a drop down menu, select the words, "has not" and in the second spot, select the word, "is".

Print out the form and make one copy.

COMPLETING THE REQUEST FOR DIVORCE

(www.albertacourts.ca/forms/CTS3698.pdf)

Court File Number
Judicial Centre
Plaintiff
Defendant



These are all the same as
in the Statement of Claim

Address for Service and Contact Information

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

1

Fill in your name

2

Fill in the name of the person who served the Statement of Claim, and the date that the Statement of Claim was served.

4

Check off the boxes that apply to you. You may check off more than one box (e.g. if the Defendant has filed a response to the divorce and is now consenting).

5

Fill in the DEFENDANT's complete address, including postal code.

6

Fill in the Defendant's lawyer's complete address. If the Defendant has no lawyer, fill in "none".

7

Fill in YOUR lawyer's complete address. If you have no lawyer, fill in "none"

Print out the form and make one copy.

COMPLETING THE AFFIDAVIT OF APPLICANT

(www.albertacourts.ca/forms/cts3840.pdf)



Tips:

- This form is quite complex, and you may need to add information that does not fit in the spaces provided. If that happens, you should use the Word version of Form FL-23, on the Queen's Bench section of the albertacourts website.
- Fill out all of the parts of this form, unless the instructions tell you otherwise.

Court File Number
Judicial Centre
Plaintiff
Defendant



These are all the same as
in the Statement of Claim

Address for Service and Contact Information

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

Affidavit of

Fill in your name.

Sworn on

Fill this in after you swear the Affidavit of Applicant.

Introductory paragraph of Affidavit:

Fill in your name, occupation and city of residence.

1: Parties

Fill in the complete address of the Defendant.

#2: Service

Check the Affidavit of Service to see what exhibit letter was used for the photo of the Defendant. Put that letter in here.

3: Marriage

There are two checkboxes here. If you were married in Canada, use the first checkbox. If you were married outside Canada, use the second checkbox.

First Checkbox (marriage in Canada)

- Fill in the date and place of the marriage. The marriage certificate will be Exhibit "A".
- Beside the words "issued by", fill in "the province of ..." and state the province where you were married.



Tips:

- If you were married in Canada, you must have a marriage certificate to complete this step.
- You must attach the original marriage certificate (as you received it from the provincial government office), not a photocopy.

Second Checkbox (marriage outside Canada)

- Fill in the date and place of the marriage (City and Country).
- If you have a marriage certificate, or some other document proving your marriage, that will be Exhibit "A". At the drop down menu, select the type of document that you have.
- Fill in the place of the marriage again, then the name of the person who conducted your marriage ceremony.
- Fill in the names of the people who witnessed your marriage ceremony.



Tips:

- If you cannot remember the name of the person who conducted your marriage ceremony, say "unknown", but it is helpful to describe the person (e.g. "a government official who we believed to have the authority to conduct marriages").
- 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".
- If you don't have a marriage certificate, cross off the part of the paragraph that refers to attaching it as an exhibit.

#4 Residence

Choose either Plaintiff or Defendant – to show which of you had lived in Alberta for at least one year before the Statement of Claim was filed. This must match #2 of the Statement of Claim.

#5 Grounds

Check the one box that applies. The grounds must match those in #3 of the Statement of Claim.

First box – separation of one year. Fill in the date that you separated (must be more than one year ago!) and the place that you were living at the time that you separated.

Second box – adultery. In most cases, the Defendant must be willing to sign an Affidavit admitting the adultery. If they are not willing to admit, you should talk to a lawyer.

Third box – mental or physical cruelty. Explain what the Defendant did that was cruel, how that affected you, when you separated, and how you have felt since the separation.

#6 - 8 Bars to Divorce

If your grounds are one year separation, do not check off any boxes. If your grounds are adultery or cruelty, check off all the boxes in 7 and 8.



Tips:

- #6 – 8 refer to the “Bars” to divorce. If any of these are not true, the judge will not grant the divorce.
- #6 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.
- #7 talks about encouraging your spouse to commit adultery or cruelty.
- #8 talks about forgiving your spouse for committing adultery or cruelty.
- Note that #7 and #8 only apply if you are using adultery or cruelty grounds.
- If #6 – 8 are not true for you, then you should talk to a lawyer before going any further.

#9 Children

Check off the box that says there are no children of the marriage.

#10 Spousal Support

If you and your spouse have a written agreement in which you both waive child support, check off the first box.

If one of you will pay spousal support to the other, check off the second box, and use the drop down menus to select which party will pay and which will receive the spousal support. Then fill in the amount and explain when it will be paid (e.g. monthly, or lump sum).

If neither of you will be paying spousal support but you do not have a written agreement, handwrite in the following, after you print off the form: “Neither spouse will pay spousal support.”

#11 Reconciliation

Do not write anything here.

#12 Statement of Claim for Divorce

Go back and read over your Statement of Claim.

If there are no mistakes, check off the first box

If there are any mistakes in it, check off the second box and list them here. (e.g. "Paragraph 1(1)(a) of the Statement of Claim lists the wrong date of marriage. Instead of January 15, 2000, it should be August 23, 1997.")

#13 Relief Requested

Check off the items that you are wanting in the Divorce Judgment

Print off the form.

Put the Affidavit of Applicant 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)

The marriage certificate (and translation) will be marked as Exhibits.

Sign your Affidavit in front of a Commissioner for Oaths. The Clerk at the Court of Queen's Bench Divorce Counter or the staff at Family Justice Services – Family Law Information can act as a Commissioner for Oaths for you.

Make one copy of the Affidavit of Applicant and all exhibits AFTER it is sworn.

COMPLETING THE DIVORCE JUDGMENT

(www.albertacourts.ca/forms/cts3695.pdf)



Tips:

- This form is designed for the simple divorce. If you need to add clauses, you will have to use the Word versions of Form FL-25 on the Queen's Bench section of the albertacourts website, or you can ask for a fill in the blank form from staff at Family Justice Services – Family Law Information.

**Court File Number
Judicial Centre
Plaintiff
Defendant**



These are all the same as
in the Statement of Claim

Address for Service and Contact Information

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

**Date on which Judgment is granted
Location of Hearing or Trial
Name of Judge who granted...**



Leave all of these
blank

Introductory paragraphs (also called the Preamble)

Fill in the your name.

IT IS ADJUDGED

Fill in the date of your marriage and the place (city and province / country)



Tip:

- If there were mistakes in the Statement of Claim, you must include clauses granting leave to amend the Statement of Claim. (e.g. "It is Ordered That leave is granted to amend paragraph 1(1)(a) of the Statement of Claim to show the marriage date as August 23, 1997")

Make 1 copy of the Judgment for your own records.

FILE THE REQUEST FOR DIVORCE AND SUPPORTING DOCUMENTS

Bring to the court house:

- Affidavit of Service (+ 1 copy)
- Noting in Default (+ 1 copy)
- Request for Divorce (+ 1 copy)
- Affidavit of Applicant (+ 1 copy)
- Divorce Judgment
- 9 x 12 inch envelope addressed to you with sufficient postage.
- Business size envelope addressed to the Defendant with sufficient postage

The clerks will return filed copies of all of the documents, except the Divorce Judgment to you.

Your divorce will then be reviewed by the clerks to make sure that the paperwork has been filled out correctly. This may take a day or two in smaller centres, and up to several weeks in larger centres.

If you have made mistakes, your divorce will be rejected, and you will be told what to correct. If the paperwork is all correct, the clerks will give the divorce to a Justice, who will then review it themselves, and if they approve, will sign it.

You will then receive the Divorce Judgment in the mail. A copy will also be mailed to the Defendant.

THE REQUEST FOR THE CERTIFICATE OF DIVORCE

(www.albertacourts.ca/forms/cts3697.pdf)

Wait 31 days from when the Divorce Judgment was signed.

Court File Number
Judicial Centre
Plaintiff
Defendant



These are all the same as
in the Statement of Claim

Address for Service and Contact Information

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

In the body of the form, fill in your name (in two spots), and the town/city and province in which you live.

Print out the form. Date and sign it

Bring the form to the courthouse. The clerk will process the request and provide you with the Certificate of Divorce while you wait.



Tips:

- You will need this Certificate if you want to re-marry.
- If you are wanting to re-marry and the wedding will take place outside of Canada, make sure to tell the Clerk when you ask for your Certificate of Divorce. The Clerk will give you the Certificate in a special format and can tell you what further steps you need to take to have it authenticated for use outside the country.

YOU ARE FINISHED!

DIVORCE CHECKSHEET

FIRST TRIP TO THE COURT HOUSE

- STATEMENT OF CLAIM FOR DIVORCE.....ORIGINAL & 2 Copies
(\$260 filing fee)
-

SECOND TRIP TO THE COURT HOUSE

- AFFIDAVIT OF SERVICE.....ORIGINAL AND 1 COPY
- NOTING IN DEFAULT.....ORIGINAL AND 1 COPY
- REQUEST FOR DIVORCE.....ORIGINAL AND 1 COPY
- AFFIDAVIT OF APPLICANT.....ORIGINAL AND 1 COPY
- DIVORCE JUDGMENT w/o children.....ORIGINAL
- TWO STAMPED, SELF ADDRESSED ENVELOPES
9 x 12 inch envelope addressed to you
Business size envelope addressed to your spouse
-

LAST TRIP TO THE COURT HOUSE

- REQUEST FOR CERTIFICATE OF DIVORCE.....ORIGINAL