

Joint Divorce – Civil Marriage Act

Court of Queen's Bench

Joint Divorce – *Civil Marriage Act*

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 under the *Civil Marriage Act* 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.

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).

Were you married in Alberta?

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 you or your spouse each 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 being valid. If either spouse resides in Canada, then you cannot apply for divorce under the *Civil Marriage Act*.

Do you have grounds for divorce?

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



Tips:

- 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.
- Use the Divorce Checklist at the end of these instructions for a handy summary of the forms and photocopies you will need.

Do you have the correct marriage certificate?

You will need the marriage certificate that was issued by the Province of Alberta 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. You can order a marriage certificate from any [Alberta Registry Agent](#).

**Tip:**

- Most people do not receive a marriage certificate from the Government of Alberta unless they go through the process of ordering one. It is not sent automatically after the marriage ceremony.

COMPLETING THE JOINT STATEMENT OF CLAIM

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.

Spouse 1 and Spouse 2

Look at your marriage certificate. Use the names exactly as they are on the marriage certificate. But, if one spouse assumed the other spouse's last name, you can use the married last name.

For example, the marriage certificate lists the spouses 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

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

#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/zip 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 and 3 Residence

To file for divorce under the *Civil Marriage Act*, it must be true that:

- Neither spouse currently lives in Canada. If one of you currently lives in Canada, then you must apply for divorce under the *Divorce Act* in the province/territory where one of you resides.

- For at least one year immediately before filing, each spouse has lived in a country or jurisdiction where your Alberta marriage is not accepted as being valid, and a divorce cannot be granted to you in that country or jurisdiction.

#4 Grounds

Do not write anything in here.

#5 Reconciliation

Do not write anything in 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 in 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

If you have been to court before regarding the breakdown of the marriage (for example, you have filed for divorce in another country), then state the name of the Court, the country or jurisdiction, and the type of order and the date it was made (if any). If you have not been to court, say “none”.

#8 Remedy Sought

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



Tip:

Under the *Civil Marriage Act*, a divorce action cannot be combined with a claim for other relief such as spousal support, child support, or the parenting arrangements for children (custody or access). Only a divorce judgment can be granted by the Court.

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!)

Send the following items **by mail or pre-paid courier** to any Court of Queen's Bench location in the Province of Alberta

- 3 copies of the Joint Statement of Claim,
- \$250 filing fee in Canadian funds (paid by certified cheque or money order),
- Two pre-paid (stamped) envelopes, addressed to each spouse at the address identified as their address for service on the Joint Statement of Claim.

You can find a list of Court of Queen's Bench locations online at:

<http://www.albertacourts.ab.ca/CourtofQueensBench/LocationsSittings/tabid/225/Default.aspx>

The court clerk will keep your original Joint Statement of Claim, and will send each spouse one filed copy by regular mail in the envelopes provided.

COMPLETING THE REQUEST FOR DIVORCE

Court File number
Judicial Centre
Spouse 1 / Spouse 2



These are all the same as in the
Statement of Claim

Address for Service and Contact Information

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

Print out the form and ensure both spouses sign it.

Make two copies of the signed Request for Divorce.

COMPLETING THE AFFIDAVIT OF APPLICANT

Court File number
Judicial Centre
Spouse 1
Spouse 2



These are all the same as in the
Statement of Claim

Address for Service and Contact Information

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

Affidavit of

Fill in both names.

Sworn on

Fill this in after you swear the Affidavit of Applicant.

Introductory paragraph of Affidavit:

Fill in your names, and your city and country of residence.

#1 Parties

Fill in the complete addresses of both parties.

#2 and 3 Marriage

Fill in the date and place of the marriage.

You will need to attach the marriage certificate from the Province of Alberta to your affidavit as Exhibit "A".

Tips:



- 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. If you do not have your marriage certificate, contact a Registry Agent in Alberta to request a replacement. Further information can be found online at: <http://www.servicealberta.ca/1158.cfm>

#4 Residence

To file for divorce under the *Civil Marriage Act*, it must be true that:

- Neither spouse currently lives in Canada. If one of you currently lives in Canada, then you must apply for divorce under the *Divorce Act* in the province/territory where one of you resides.

- For at least one year immediately before filing, each spouse has lived in a country or jurisdiction where your Alberta marriage is not accepted as being valid, and a divorce cannot be granted to you in that country or jurisdiction.

#5 Grounds

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.

#6 Bars to Divorce

Do not write anything here.



Tips:

- Paragraph 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 #5 is not true, the judge will not grant the divorce, and you should talk to a lawyer before going any further.

#7 Reconciliation

Do not write anything here.

#8 Statement of Claim for Divorce

Go back and read over your Joint 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.
(For example, “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.”)

#9 Relief Requested

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

If there were mistakes in the Statement of Claim, check off “other” and ask the Court for permission to amend the Statement of Claim. (For example, “Permission to amend paragraph 1(1)(a) of the Statement of Claim to show the marriage date as August 23, 1997.”)



Tip:

Under the *Civil Marriage Act*, a divorce action cannot be combined with a claim for other relief such as spousal support, child support, or the parenting arrangements for children (custody or access). Only a divorce judgment can be granted by the Court.

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 marriage certificate will need to be marked as an Exhibit.

Sign your Affidavit in front of a person authorized to administer an oath or solemn affirmation in your jurisdiction.



Tip:

See sections 47-48 of the *Alberta Evidence Act* for a list of the individuals authorized to administer an oath or affirmation outside of Alberta for use in court proceedings in Alberta. The *Alberta Evidence Act* can be found online at:

<http://www.qp.alberta.ca/documents/Acts/A18.pdf>

Make two copies of the Affidavit of Applicant and all exhibits AFTER it is sworn.

COMPLETING THE DIVORCE JUDGMENT



Tip:

- The online form does not work for joint divorces. We recommend that you use the fill in the blank form available with this package.

Court File Number
Judicial Centre
Spouse 1 / Spouse 2



These are all the same as in the Statement of Claim

Address for Service and Contact Information

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

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 your names.

IT IS ADJUDGED

Fill in the date of your marriage and the city/town in Alberta where you were married.



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")

Each of you must sign the Divorce Judgment. Your signatures must be witnessed and the witness must complete the Affidavit of Execution before a person authorized to administer an oath or solemn affirmation in your jurisdiction (*See the "Tip" on page 9*).

Make 2 copies of the Divorce Judgment for your own records.

REQUEST FOR THE CERTIFICATE OF DIVORCE (*Optional*)



Tips:

- You will need a Certificate of Divorce if you want to re-marry.
- If you want to re-marry and the wedding will take place outside of Canada, make sure to tell the Clerk when you send in your request for a 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.

Court File Number

Judicial Centre

Wife

Husband



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

FILE THE REQUEST FOR DIVORCE AND SUPPORTING DOCUMENTS

Send the following documents **by mail or pre-paid courier** to the Court of Queen's Bench location where you previously filed your Joint Statement of Claim for Divorce:

- Request for Divorce (+ 2 copies)
- Affidavit of Applicant (+ 2 copies)
- Divorce Judgment
- Request for Certificate of Divorce (Optional)
- Two 9 x 12 inch envelopes - one addressed to each of you - with sufficient postage.

The clerks will return filed copies of all of the documents to you, except the Divorce Judgment and the Request for Certificate of Divorce. One filed copy is for each of 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 documents may be returned to you, and you will be told what to correct. If the paperwork is all correct, the clerks will give the divorce application to a Justice, who will then review it themselves, and if they approve, will sign it.

You will each then receive the Divorce Judgment and the Certificate of Divorce (*if requested*) in the mail.

YOUR DIVORCE IS COMPLETE!

DIVORCE CHECKSHEET

FIRST TRIP/MAILING TO THE COURT HOUSE

- STATEMENT OF CLAIM FOR DIVORCE.....ORIGINAL & 2 Copies
(\$250 filing fee)
-

SECOND TRIP/MAILING TO THE COURT HOUSE

- REQUEST FOR DIVORCE.....ORIGINAL AND 1 COPY
- AFFIDAVIT OF APPLICANT.....ORIGINAL AND 1 COPY
- DIVORCE JUDGMENT.....ORIGINAL
- REQUEST FOR CERTIFICATE OF DIVORCE.....ORIGINAL
- TWO LARGE (9 x 12 inch) STAMPED, SELF ADDRESSED ENVELOPES,
One addressed to each of you