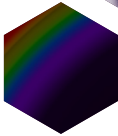
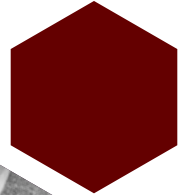
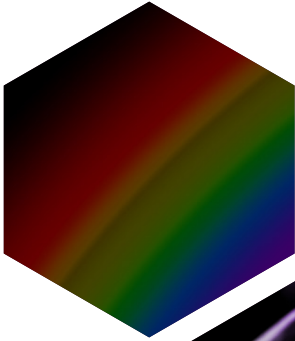


MARRIAGE & DIVORCE

FOR THE LGBTQ+ COMMUNITY



This guidebook reflects information from 2020 and may change over time.

***This guidebook has been produced with funding and support from
Alberta Status of Women.***

MARRIAGE FOR THE LGBTQ+ COMMUNITY IN ALBERTA

WHAT ARE THE ADVANTAGES OF BEING MARRIED?

- The amount of federal tax you pay can be affected by shared benefits
- If your spouse or common law partner does not need all of their non-refundable credits, they can transfer them to you to reduce your tax liability
 - This includes age, pension income, disability, and unused tuition credits. You may also be able to split your pension with your spouse and lower your taxes owing

| NON-REFUNDABLE TAX CREDITS | |
|----------------------------|---|
| AGE | ✓ |
| PENSION INCOME | ✓ |
| DISABILITY | ✓ |
| UNUSED TUITION CREDITS | ✓ |



- If you supported your spouse at any time during the year and their net income was less than \$12,069 (in 2019), you can benefit from the spousal amount. The amount you would receive is the difference between your spouse's income and \$12,069
- You can pool your charitable contributions and medical expenses together in order to receive a larger tax credit
- Estate planning
 - Marriage is a surefire way to ensure that your spouse has a claim to your shared assets
- Next of kin laws
 - Getting married allows you to be considered legally next of kin or immediate family, which can be essential in medical emergencies

If you receive certain government benefits like AISH, you may become ineligible to receive them if your spouse is over a certain income threshold. It may be worth a conversation with your partner, case worker, and/or financial advisor to help determine what makes the most sense for you and your relationship.

There is no legal difference between getting married by a clergy person or a marriage commissioner in Alberta.

There are nearly 40 marriage commissioners available in the Calgary area.

***A humble plug for the Affirming and Welcoming Faith Communities Network, which encompasses the Calgary area and has many supportive clergy who would love to help you plan your special day:
<https://affirmingconnections.com/ministrymap>***



The bare minimum for a marriage ceremony includes:

- A couple
- Someone licensed to marry you (clergy or a commissioner)
- 2 witnesses
 - The witnesses must be 18 years of age or older and they need to be there in person (no Zoomed in witnesses!)



HOW DO COMMON LAW RELATIONSHIPS WORK IN ALBERTA?

In 2003, a law was passed that created “adult interdependent relationships” as a new category of relationships. In Alberta, this is the term that is used instead of “common law”. The federal government uses the term “common law” for income tax purposes or for the purpose of receiving federal government benefits. Under this specific definition, the couple needs to have lived together for one year.

This is different from the provincial requirements for an adult interdependent relationship.

To be in an adult interdependent relationship in Alberta, one of three things must have taken place:



TWO PEOPLE HAVE SIGNED AN ADULT INTERDEPENDENT PARTNER AGREEMENT



TWO PEOPLE HAVE LIVED IN A RELATIONSHIP OF INTERDEPENDENCE FOR THREE YEARS OR MORE



TWO PEOPLE LIVE TOGETHER IN A RELATIONSHIP OF INTERDEPENDENCE AND HAVE A CHILD THROUGH BIRTH OR ADOPTION

A relationship of interdependence is defined by two people sharing each other's lives, being emotionally committed to each other, and functioning as an economic and domestic unit.

- The relationship does not have to be sexual. It can be platonic and be between relatives or close friends
- You can't have more than one adult interdependent partner at a time

If you are younger than 18 years, you can be in an adult interdependent relationship if you meet the requirements set out in the Act and you are not related to each other. If you are a minor and want to make an Adult Interdependent Partner Agreement, you need to be 16 or 17 years old, your guardians must sign the Agreement, and you can't be related.

There is a specific format for creating an Adult Interdependent Partner Agreement. You can find it in the Adult Interdependent Partner Agreement Regulation online. You can copy/paste or retype the information into your own document before printing off and signing, but you need to copy the format exactly or it may be invalid. Each partner needs an original copy of the agreement and it should be kept in a safe place.

Adult interdependent partner agreements are not the same as a cohabitation agreement. Cohabitation agreements have no specific formats and a lawyer should be consulted when creating them.

WHAT HAPPENS WHEN AN ADULT INTERDEPENDENT RELATIONSHIP ENDS?

Adult interdependent relationships end when one of the following occurs:

- A written agreement is made stating the relationship is over
- You live separate and apart for one year and one or both of you intends that the relationship is over
- You marry each other
- One of you marries someone else
- You or your partner enters into an adult interdependent partner agreement with someone else (this applies if you did not sign an adult interdependent agreement)
- One or both of you gets a declaration of irreconcilability under the Family Law Act

If you reconcile for 90 days or more, you and your former partner will need to live apart for another full 12 months. You can live with your former adult interdependent partner, but you should ensure your lives are as separate as possible, otherwise you may be considered to be in a relationship.

ADULT INTERDEPENDENT RELATIONSHIPS AND WILLS

If the deceased person has a will, the surviving partner has the following rights:

- The right to occupy the family home for up to 90 days starting on the date of the deceased partner's death
- The surviving partner may ask the court for maintenance and support from the deceased partner's estate if the deceased partner did not make adequate provisions for the surviving partner in their will

If the deceased partner did not make a will:

- The estate administration act will set out who can apply to the court for the grant of administration. The surviving adult interdependent has the first priority to apply for this.
- Once an administrator has been appointed, the Wills and Succession Act sets out who can inherit the estate.
 - If the deceased partner died without any descendants, then the surviving partner inherits the whole estate

- If the deceased partner died with descendants, and those descendants are also the descendants of the surviving partner, the surviving partner gets the whole estate
 - If the deceased partner died with descendants, and those descendants are not also descendants of the surviving partner, then the surviving partner gets either 50% of the estate or \$150,000, whichever is greater. The descendants share the rest of the estate. If the surviving partner is related to the deceased partner, then the surviving partner only gets what they are entitled to as the surviving partner and not in any other capacity (ie they can't receive two portions for being the interdependent partner and a child)
- The surviving partner also has a right to live in the family home for 90 days after the deceased partner's death and to make a claim for maintenance and support.

SEPARATION IN ALBERTA

If you and your spouse no longer live together, you are considered to be separated. There are no official court proceedings for separation; however if you would like to officially end your marriage, you must go through the divorce process.



You and your spouse may attempt to get back together for up to 90 days without having to start counting the one year separation period again. You must be separated for one year before filing for divorce.

DIVORCE IN ALBERTA

In order to file for divorce in Alberta, you must be a resident of Alberta for one year minimum, and your situation must fall into one of these three situations:



LIVING SEPARATELY AND APART FROM YOUR SPOUSE FOR ONE YEAR



YOUR SPOUSE WAS PHYSICALLY OR MENTALLY CRUEL TO YOU, MAKING IT IMPOSSIBLE TO CONTINUE THE MARRIAGE



YOUR SPOUSE HAS COMMITTED ADULTERY

You are not required to hire a lawyer to represent you, but it is a good idea to consult with a lawyer ahead of time—especially if you have children, property, and/or shared finances.

If you have an uncontested divorce, an experienced paralegal is the best choice for helping you fill out paperwork.

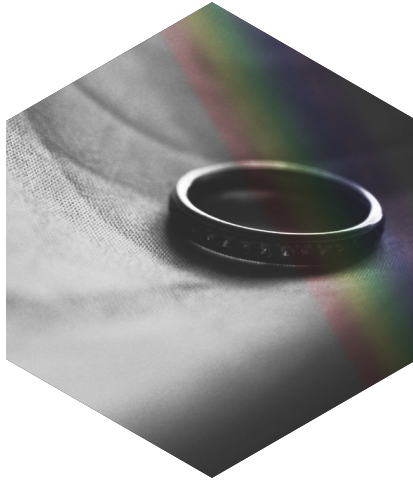
FILING FOR DIVORCE IN ALBERTA

A statement of claim for divorce needs to be filed with the Clerk of the Court of Queen’s Bench. The filing fee is \$200.

If you are the spouse who starts the process, you are called the plaintiff and the other spouse is called the defendant. The statement must provide details about your grounds for divorce and your marriage. You will want to include birthdates, birthplaces of yourself and your spouse, maiden names, current addresses, and details of the claim for the distribution of property acquired during the marriage. If you have already decided on a division of property and/or a custody arrangement, include this in the statement as well.

Your spouse must know that you have started an action for divorce. You can personally hand the claim to your spouse, or you can hire a process server (courier). You can't mail the documents. However, if your spouse is outside of Canada, you can apply to the court for an alternate method of delivery.

Your documents will then be reviewed by a judge who must be satisfied that all the requirements for a divorce have been met. Once these requirements have been met, you will be granted a divorce judgement.



Custody, access, or child support orders may be changed or varied; however the divorce itself is final.

If you wish to appeal the divorce judgement on a question of law, you must file a notice of appeal to the court of appeal within 30 days of the divorce judgement.

Your divorce is final on the 31st day after the court grants the divorce judgement (unless there are special circumstances). Following this, you can apply for a Certificate of Divorce. This certificate will show when the divorce was finalized. All marital assets must be distributed within 2 years of this date.

ARE THERE OTHER OPTIONS FOR DIVORCE IN ALBERTA?

In Alberta, you can file for a joint divorce. In a joint divorce, both spouses complete and execute all documents together. The benefit of using this approach is that spouses really feel like they are ending their relationship on the best of terms.

In order to file for a joint divorce:

- One of the spouses must have been a resident of Alberta for one year minimum prior to the joint statement of claim for divorce and
- The basis of grounds for divorce can only be that the parties have been living separate and apart for one year prior to the divorce judgement. (You cannot file for a joint divorce if you are applying for divorce on grounds of adultery or physical/mental cruelty.)

find the right support for your important life transitions.

Resources:

<https://www.canadianlegal.org/uncontested-divorces-in-alberta/>

<https://clg.ab.ca/programs-services/dial-a-law/separation-and-divorce/>

<https://kahanelaw.com/joint-divorce-in-alberta-the-most-amicable-divorce-possible/>

<https://clg.ab.ca/programs-services/dial-a-law/the-divorce-procedure/>

http://www.qp.alberta.ca/documents/Regs/2011_066.pdf

<https://www.law-faqs.org/alberta-faqs/family-law/adult-interdependent-relationships/>



calgary outlink

Centre for Gender and Sexual Diversity