



Type of law:  
**FAMILY LAW**

A 2018 Alberta Guide to the Law

---

---

# Getting Married



## **COPYRIGHT & DISCLAIMER**

### **GENERAL**

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer.

### **COPYRIGHT**

Copyright 2018 Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source and thus there may be different restrictions on the reproduction of this material.

### **LIMITATION OF LIABILITY**

Student Legal Services of Edmonton is not liable for any loss or damage caused by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individuals agree that any usage is at their own risk.

### **INFORMATION AND OPINIONS**

In some instances, information obtained by Student Legal Services may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and Information provided by third parties does not represent that of Student Legal Services of Edmonton.

### **IMAGES**

Icons made by Freepik from [www.flaticon.com](http://www.flaticon.com).

Infographics sourced from Piktochart from [www.piktochart.com](http://www.piktochart.com).

## Table of Contents

WHAT IS MARRIAGE?.....	1
Monogamy .....	1
Maintenance .....	1
Ability to Sue Your Spouse .....	2
Testifying Against Your Spouse .....	2
Engagement .....	2
Formalities of Marriage (Marriage Act) .....	2
Same Sex Marriage.....	3
Whose Name? .....	3
Your Children’s Names .....	4
PROPERTY .....	4
1. Who Owns It? .....	4
2. Buying a House .....	4
3. Dower Rights .....	5
4. Marriage Contracts.....	5
5. Debts .....	6
6. Wills and Estates .....	6
CHILDREN.....	7
WHO CAN I CALL FOR MORE HELP OR INFORMATION?.....	8
Legal Resources.....	8
Other Resources.....	10

## **WHAT IS MARRIAGE?**

There are a number of legal changes that take effect upon marriage. This pamphlet gives you some general information on areas of the law in Alberta that are relevant to you during your marriage.

The first thing for both parties to the marriage to do is get a marriage license together at any Registry Agency. Fees will vary with each Registry Agency. Both parties must speak English or have an interpreter present when applying. Both parties must provide their parent's full names and birth places, and be currently unmarried. If either party is divorced, you must bring your official Decree Absolute or Certificate of Divorce. The wedding must be taking place in Alberta. You must be free of the influence of drugs and alcohol when you apply for the license and during the wedding ceremony. The license is valid for 3 months, so you must get married within 90 days of buying the license.

To qualify for a license both parties must have some form of identification (e.g. birth certificate, driver's license or something similar). They must generally also be 18 years old or older. To marry before the age of 18, the party must have the consent of their guardians unless the guardian is mentally incompetent or consent cannot be obtained. If a party is claiming that they cannot obtain the consent of their guardian, they can apply to the Court of Queen's Bench to dispense with consent.

Marriage is a legal commitment as well as a personal one. It is a contract between two people that will be enforced by the Courts. Some elements of the contract are discussed below.



### ***Monogamy***

By marrying, you enter into a voluntary monogamous (2 person) sexual relationship with your spouse for the rest of your life, or until divorce. Having sexual relations with someone other than your spouse is considered adultery and your spouse may apply for divorce on this ground. If you are still legally married and attempt to marry a second spouse, this second marriage will be void.

### ***Maintenance***

Both spouses have an obligation to 'maintain' (financially support) each other and the children of the marriage. It may be a crime not to provide your spouse and your children with "necessaries" -- food, clothing, and shelter.

### ***Ability to Sue Your Spouse***

You can sue your spouse in a civil court action. An example of this is you could sue your spouse if you are injured because of your their negligence in a car accident. In this situation it would be important to contact a lawyer.

### ***Testifying Against Your Spouse***

Recent changes to the *Canada Evidence Act* now allows the prosecution to call on the spouse of an accused as a witness. The limit to their witness testimony is that a spouse cannot be forced to disclose any statements made to them by the accused, although a spouse can choose to disclose.

The protection of communication between spouses applies only to legally married individuals and not to common law partnerships.

This is a complex area of the law. For further information regarding testifying against your spouse please consult the *Canada Evidence Act* and a lawyer.

### ***Engagement***

An engagement is an agreement to marry; it is a contract between you and your future spouse. There may be legal implications if the contract is broken. You cannot be forced to marry if you do not want to, but under very rare and extreme circumstances you may be sued for breach of promise and damages may be awarded if the other party suffered economic losses in anticipation of the marriage. Similarly, it is generally a good idea to return gifts given to you in contemplation of marriage (i.e. wedding gifts, engagement ring) if the wedding is called off.



Consult a lawyer if you have further legal questions following the breakdown of an agreement to marry.

### ***Formalities of Marriage (Marriage Act)***

There are certain formal requirements for a valid marriage. If these are not met, the Court may annul the marriage which means it is as if the marriage never happened.

These requirements are:

- It must be voluntary (e.g. both parties agree to the marriage).

- Neither party may currently be married. Both must be unmarried, widowed or divorced.
- You cannot be related, either by blood or adoption. For example, you cannot marry your parents or grandparents.

If you are between 16 and 18 years old, your guardian must consent to the marriage if you have a guardian who is competent. If you are 16 and a mother or pregnant, this rule does not apply to you. Similarly, if you are under age, wish to marry and are unable to get consent from your guardian, you can apply to the Court of Queen's Bench to get rid of the need for parental consent.

If you marry without meeting the requirements of the Act, the marriage will not automatically be annulled (cancelled). It will be up to the Court of Queen's Bench to determine if the marriage is lawful notwithstanding the non-compliance with the Act.

### ***Same Sex Marriage***

Same sex marriage is lawfully recognised. Religious officials are free to refuse to perform a marriage that is not in accordance with their religious beliefs. A civil marriage commissioner cannot refuse to perform a same sex marriage. The procedure is otherwise the same for same sex couples as that for heterosexual couples.



### ***Whose Name?***

In Alberta, one spouse may adopt the other spouse's last name when they marry, or may choose to use a hyphenated last name (ie. Smith-Bear). However, this is not necessary, and both spouses can continue to use the name they were born with. To legally change your identification to a newly adopted last name, the spouse must take the official government Marriage Certificate to a registry agent to begin the process of changing his/her identification.

Another option is for either spouse to use the name he/she was born with for legal purposes (ie. signing cheques) and their spouse's name for social purposes. This name change is not a "legal" name change because the person changing names in this way does not have to report it to Vital Statistics.

## ***Your Children's Names***

If you and your spouse use the same last name, any children of that marriage will be registered on their birth certificates using that same last name. However, both parents can request to use a different last name, for example a hyphenated last name or a maiden name other than that assumed by the spouses.

If you and your spouse use different last names, any children of the marriage will be registered using the two surnames, hyphenated in alphabetical order. Again, however, both parents can request to use one of the two names or the names in some other combination.

If a woman is married but separated and conceives a child with another man, the woman may apply to have the child registered in her surname alone.

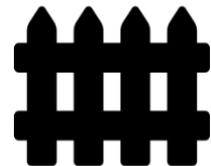


## **PROPERTY**

### ***1. Who Owns It?***

Property that is purchased or is accumulated by either spouse during the marriage is presumed to be matrimonial property. Money in a bank account can be considered jointly owned matrimonial property, with both spouses having rights to it.

If you and your spouse divorce and conflict arises, the Court may step in and divide up all property purchased during the marriage equally. It makes no difference who paid for it. This includes companies, investments and pensions.



If one spouse owned property before the marriage, or received gifts, inheritance or money from an accident before or during the marriage the principal (starting) amount will belong just to that one spouse. If the value of this type of property increased in value during the course of the marriage, the Court has the ability to divide up the increase in the value of the property in the event of a divorce. The exemption may also be lost or reduced if it is "brought into the marriage", meaning when the property is shared and used with your spouse or family.

## **2. Buying a House**

Most couples who are buying a house put it in the form of a **Joint Tenancy**. This means that if one partner dies, the other automatically takes over the deceased spouse's share (he/she gets the entire house) and it cannot be given away to anyone else in the will of the deceased spouse.

The house may also be purchased as a **Tenancy-In-Common**. This means that you each own a share in the house. If one spouse dies, he/she may give his/her share away in the will to anyone, the property does not automatically go to the surviving spouse.

It is an excellent idea to have a lawyer handle the purchase of a house for you. This may be the biggest investment you ever make!

## **3. Dower Rights**

If your matrimonial home is in the name of both spouses or of only one spouse, the *Dower Act* may give certain rights to the other spouse, such as requiring consent to sell or gift the home to another person, and also rights to the home should the spouse who is the named owner die. It is important to consult a lawyer if you feel your dower rights may be breached as a result of your spouse's or spouse's estates actions.

## **4. Marriage Contracts**



A property division agreement outlines how you want your property divided in the event of a divorce. This will likely be upheld in court if it is made properly. This type of agreement is especially useful if one spouse owned property or investments prior to the marriage, or if one spouse owns a company. This kind of agreement can be entered into at any time before or during the marriage.

In order to be recognised by the Courts, each spouse must have his/her lawyer review the agreement. You must also acknowledge in writing that you understand that you may be losing your rights under the *Matrimonial Property Act*, by entering into the property division agreement.

## **5. Debts**

Debts can also be in joint names. If both spouses signed the credit card application or the loan application, they are each responsible for the entire debt individually. If one doesn't pay, the creditor (lender) will go after the other. Always make sure you understand the legal consequences before you sign anything.

If you are over your head in debt, you can get help. Credit Counselling (see Resource List at the end of this pamphlet) has a program to help you organise a budget. They can also help you deal with your creditors if you cannot afford all your payments.



## **6. Wills and Estates**

If you married before February 1, 2012, any will you made prior to marriage will be revoked and property would be divided up as per the *Intestate Succession Act*. If you were married on or after February 1, 2012, a will that was active prior to your marriage will not be revoked simply because you got married.

It is important to have a will in order to arrange your affairs after your death. If you die without a will, the government steps in and divides up the property according to the *Wills and Succession Act*, if you were married on or after February 1, 2012, or the *Intestate Succession Act* if you were married prior to then.

If you leave your spouse or a descendent out of your will or don't provide enough for their maintenance and support, they can apply to the court for a share of your estate, per section 88 of the Alberta *Wills and Succession Act*.

According to the *Family Law Act*, a guardian who is also a parent may name one or more guardians for their children in his/her will. However, the main consideration for the court is the best interests of the child. Therefore, naming a guardian for your children in your Will does not guarantee that the Court will appoint that person, but it does mean the Court will consider your wishes when determining what is in the best interests of the children. If both spouses die without a Will, the government will appoint a guardian for the children until the Court determines who the children's permanent guardian will be. The appointed guardian takes on all the rights and responsibilities that the parent had over the child prior to his/her death. The individual appointed guardian of your child may or may not be the same person who is responsible for managing the estate that is left to your child.

## **CHILDREN**

Each spouse is a guardian with equal rights and responsibilities respecting children of the marriage. This only changes if you make an agreement regarding guardianship or if the Court makes a parenting order.

If there is a parenting dispute following a separation or divorce the Court looks at what is in the best interests of the child (i.e. which parent will provide the best home for the child).



You are obliged by law to provide emotional and physical care for your children. It is against the law to neglect your children, or abuse them; neglect and abuse can result in criminal charges and/or having the government remove the children from your care.

Edmonton Resolution Support Centre, Edmonton Community Legal Centre, and Legal Aid Alberta provide free and low cost services to help low income parents sort out these issues and to make parenting time and support agreements. They will also assist both parties in Family Court if there is a need for a Court order.

Please see our "Custody and Access" and "Child Support" pamphlets for more information regarding children.

## WHO CAN I CALL FOR MORE HELP OR INFORMATION?

### Legal Resources

<b>Edmonton Community Legal Centre (ECLC)</b> Telus House, South Tower: Second floor, 10020 – 100 Street, Edmonton, AB	<b>Ph: 780-702-1725</b> <a href="http://www.eclc.ca">www.eclc.ca</a>
---	---

ECLC provides legal services for low-income Albertans in certain areas of family and civil law. These services include free legal information, referral, and legal education. ECLC may also be able to provide legal advice if you fall within their eligibility criteria.

<b>Legal Aid Society of Alberta</b> Revillon Building Suite 600 – 10320 102 Avenue Edmonton, AB T5J 4A1	<b>Toll Free Ph: 1-866-845-3425</b>
--	-------------------------------------

The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

<b>Provincial Court Clerks – Family</b>	<b>Edmonton: 780-427-2743</b>
---	-------------------------------

The Provincial Court Family Clerks are able to assist in providing information for Provincial Court Family matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

<b>Edmonton Resolution Support Services</b> 8th Floor - John E Brownlee Building 10365 97 Street NW Edmonton, AB T5J 3W7	<b>Ph: 780-415-0404</b>
---	-------------------------

Edmonton Resolution Support Services provides various services to assist individuals dealing with a family or civil matter. They have numerous free services, such as Family Court Counsellors, Family Mediation, Child Protection and Intervention Mediation, Civil Mediation, and assistance on Court Forms and Orders.

<b>Emergency Protection Order Program</b>	<b>Ph: 780-422-9222</b> <b>*If after business hours, contact local police*</b>
---	---

The Emergency Protection Order Program is for those who have been the recipient of family violence and are seeking immediate protection from further harm. The free program will provide help with risk assessments and safety plans, provide information, and provide a lawyer for the purpose of obtaining an Emergency Protection Order (EPO). This lawyer is not being provided to assist you with anything beyond the EPO.

<b>Office of the Child and Youth Advocate (OCYA)</b> #600 – 9925 109 Street NW Edmonton, AB T5K 2J8	<b>Toll-Free Ph: 1-800-661-3446</b>
---	-------------------------------------

The Office of the Child and Youth Advocate (OCYA) will help children and youth voice their opinions, concerns, wants, and needs during various decision-making processes so that the best interests of the child are better understood. The OCYA ensures that the voice of the child is heard and that their rights are protected throughout the intervention process.

<b>Lawyer Referral Service</b>	<b>Toll Free Ph: 1-800-661-1095</b>
--------------------------------	-------------------------------------

The Lawyer Referral Service can help you find out contact information for practicing lawyers as well as who an appropriate lawyer may be for your matter. When you call, you will speak to an operator who will then provide you with the contact information for up to three lawyers who may be able to assist you. The first half hour of your conversation with a referred lawyer will be free and you can discuss your situation and explore options.

<b>Centre for Public Legal Education Alberta (CPLA)</b> www.cplea.ca	<b>Ph: 780-451-8764</b>
---	-------------------------

CPLA provides detailed legal information online to the Alberta public on various areas of the law. They do not provide legal assistance or advice.

<b>Dial-a-Law</b> <a href="http://clg.ab.ca/programs-services/dial-a-law/">http://clg.ab.ca/programs-services/dial-a-law/</a>	<b>Toll-Free Ph: 1-800-332-1091</b>
--	-------------------------------------

Dial-a-Law is provided by Calgary Legal Guidance for all Albertans. You can call the toll-free number to receive general information on a variety of legal topics. If you have access to a computer, you can go to their website and choose to either read or listen to the information.

### Other Resources

<b>Alberta Supports Centre</b> (Various Locations) <b>Edmonton Central Location</b> 10242 105 Street NW Edmonton, AB T5J 3L5	<b>Ph: 1-780-644-9992</b>
---	---------------------------

Alberta Supports Centre functions to assist individuals and families with accessing various financial, family, and social supports. Such supports include Alberta Works and AISH.

<b>Service Canada</b> (Various Locations) <b>Downtown Location:</b> Main Floor Canada Place 9700 Jasper Avenue Edmonton, AB T5J 4C1	<b>Ph: 1-800-622-6232</b>
---	---------------------------

Service Canada is a starting point for individuals seeking to access Federal government services and benefits, such as Employment Insurance and passports.

<b>Family Violence Info Line</b>	<b>General Info Line - 24 Hour Toll-Free Ph: 310-1818</b> (no area code) <b>Emergency Financial Support: 1-866-644-5135</b> <b>Family Violence and Tenancy Concerns: 1-877-644-9992</b> <b>Sexual Assault Centers: 780-482-4357</b>
----------------------------------	--

The Family Violence Info Line provides callers with an opportunity to speak with trained staff regarding their situation and options.