



A 2019 Alberta Guide to the Law

Common Law Relationships



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GENERAL

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What is an Adult Interdependent Relationship?

This is a relationship where two people **live together** and **share emotional and economic responsibilities without being married**.

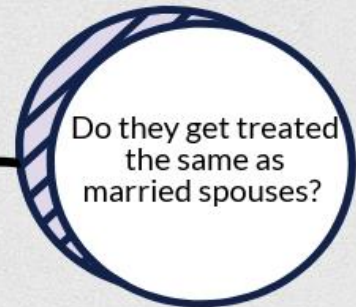


Is it the same as common law?



Kind of. Common law relationships are only one type of adult interdependent relationship. "Common law" typically refers to those relationships that are conjugal and 'marriage-like'.

Sometimes. They are typically treated the same under the Family Law Act for child/partner support and parenting, as well as for insurance, pensions, income tax, and employment benefits. **HOWEVER**, they do not have the same rights as married couples when dividing property.



Do they get treated the same as married spouses?



How do I become an adult interdependent partner?



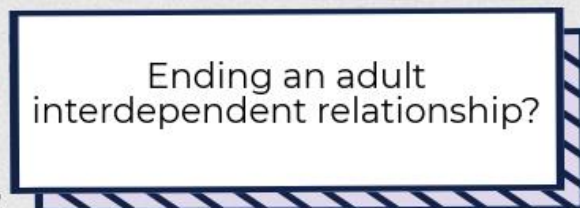
Enter into an adult interdependent relationship agreement.



Live together in a relationship of interdependence of permanence when there is a child.



Live together in a **relationship of interdependence** for 3 years.



Ending an adult interdependent relationship?

Have a written agreement to live separate and apart, and will not reconcile, or obtain a legal Declaration of Irreconcilability.



Live separate and apart for over 1 year.



Marry or enter into an adult interdependent agreement with a 3rd party.



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Common-Law Relationships and the *Adult Interdependent Relationships Act*

Common law is a term used to describe a relationship between two people who live together, but are not married. However, the term “common law” is not used in Alberta laws anymore. These types of relationships are now referred to as “adult interdependent relationships” and governed by the *Adult Interdependent Relationships Act* (“Act”).

An adult interdependent relationship occurs when two people live together and share emotional and economic responsibilities within a committed relationship without being married. This type of relationship includes common law relationships, but can also be shared between two people who are related and enter into an agreement.

Two things define an adult interdependent relationship between two individuals:

- 1) There is a **relationship of interdependence** where, outside of a marriage, two individuals:
 - Share one another’s lives;
 - Are emotionally committed to one another; **and**
 - Function as a domestic and economic unit.
- 2) To be considered adult independent partners under the Act, partners must fall under one of three categories. They must have either:
 - Lived together in a relationship of interdependence for at least **3 years**;
 - Lived in an interdependent relationship of some permanence (can be less than 3 years) when there is a child of the relationship through birth or adoption; **or**
 - Entered into an **adult interdependent partnership agreement**.
 - If the two individuals are related by blood, they must enter into an agreement to be considered to be in an adult interdependent relationship.



What is an Adult Interdependent Partnership Agreement?

An Adult Interdependent Partnership Agreement is a written agreement made between two people who are already in, or plan to be in, a relationship of interdependence with each other and live together. This agreement must follow the regulations set out in the *Adult Interdependent Partner Agreement Regulation*.

Additionally, the agreement is not valid if, at the time the agreement was made, the parties were not living, or intending to live, together **AND** at least one of the parties:

- is already in an existing Adult Interdependent Partner Agreement;
- is married;
- is a minor;
 - A minor *may* be able to enter into an agreement if they are at least 16 years old and

have received written consent from their legal guardians

- is induced into signing due to fraud, duress, or undue influence; **OR**
- lacked the mental capacity to understand the nature of the agreement.

There are two reasons why two people would enter an Adult Interdependent Partnership Agreement:

1. They live or intend to live in an adult interdependent relationship and want to be legally considered to be adult interdependent partners before the 3-year time period, or
2. The two people are related by blood or adoption want to enter into an adult interdependent relationship.
 - a. Note: This is the only way for two people who are related to be considered in an adult interdependent relationship.

Restrictions on Being in an Adult Interdependent Partnership

- A person can only have one adult interdependent partner at a time.
- A person who is married cannot be part of an adult interdependent relationship while living with their existing spouse.
- A minor may be able to be in an adult interdependent relationship but cannot do so under an adult interdependent partner agreement **unless** they are over the age of 16 **AND** have obtained written consent from their guardians.
- An agreement must be made without fraud or duress. This means that both people entering the agreement need to know what it means and must not be pressured into the agreement.
- Both people entering an agreement must have the mental capacity to understand the nature of the agreement.
- The parties must have been living together, or intending to live together, in a relationship of interdependence at the time they enter into an agreement.



Ending an Adult Interdependent Partnership

An adult interdependent partnership ends when any of these things happen:

- The partners have written agreement indicating that they intend to live separate and apart, without the possibility of getting back together ('reconciliation') or obtained a declaration of irreconcilability under s 83 of the *Family Law Act* .
- The partners live separate and apart for more than one year or both partners intend that the adult interdependent relationship ends.
- The partners marry each other or one of them marries or enters into an adult interdependent partner agreement with a third party.

Property Rights for Adult Interdependent Partners

Adult interdependent partners currently do not have the same rights or requirements as married people. The *Matrimonial Property Act* ("MPA") is the provincial law that talks about how to divide property between people who are or were **legally married**. The MPA does not apply to adult interdependent partners and there is no other legislation that applies regarding property division between adult interdependent partners.

Note: A Bill has been passed to amend the MPA to include adult interdependent partners. It will come into force **January 1, 2020**. Until then, the general rule and exceptions govern property division between adult interdependent partners.

General Rule

The very general rule is that when adult interdependent partners separate, each party keeps the property purchased by and/or registered to that party alone. Note that this is a fairly general rule and there can be many exceptions to this rule.

Exceptions to the General Rule

1) Land held in joint names

When two people have bought property together and both people are registered on title (have both of their names as owners of the land), both parties are joint legal owners. One party cannot sell the property without the other party agreeing.



Either party can apply for a Court Order from the Court of Queen's Bench for:

- The physical division of the land;
- A sale of all or part of the land;
- Division of the proceeds from the sale of the land between the co-owners of land; **or**
- A sale of the interest of one co-owner to another.

Note: This applies only to land located in Alberta. Land in other jurisdictions may be dealt with differently. Parties do not need to get a court order but can also come to agreements regarding property, but they should speak to a lawyer and reduce any agreements to writing.

2) Gifts

Gifts given from one partner to another belong to the recipient if they can show the court that the property was clearly a gift. To do this you must prove that:



- Your partner meant for it to be a gift;
- They physically gave it to you; **and**
- You accepted the gift.

Note: Gifts in contemplation of marriage (like an engagement ring) are an exception to this exception in that they may be returned to the person who made the gift in exchange for a promise of marriage, whether or not the person who made the gift is said to be at fault for the breakdown of the relationship.

3) Equity

If applying the general rule would result in an unfair benefit to one party, the other party may apply to the Court to divide the property in a different manner that would be equitable (fair and just).

There are a few situations where the Court can create a different system for the division of property:

- **Resulting Trust:** This can be used if a property is held by only one of the parties but both parties contributed financially to the property and agreed to share ownership. If there is no agreement, Courts will look at how the partners handled the property before the separation, to see if they truly intended for ownership to be shared. Typically, the Courts require that the party whose name is on the title for the property is holding the property in trust for the other party, who contributed financially, unless the Court finds that the financial contribution was intended as a gift.
 - For example: A Court may find that the parties intended for ownership to be shared if both parties used the property equally or if the property was used for the benefit of the entire family.
 - **Note:** The presumption of a resulting trust is relied upon when there is a direct financial contribution to the purchase price of the property held by the other party. Constructive trust is used when other types of contributions are made.
- **Constructive Trust:** A Court can order a constructive trust if one person unfairly benefits or profits from the acts of another. This is called '**unjust enrichment**'.
 - For example: One partner often works to keep the house and children in order, which allows the other partner to work outside the home. The partner working outside the home can then use their salary to do things such as pay down a mortgage, buy assets, and build savings for retirement. Although both partners contributed to the relationship, only one partner was making money or working outside of the home. In situations like this Courts recognize that there must be some recognition given to the non-financial contribution of the other partner.
 - In order to get a Court to recognize 'unjust enrichment' and distribute property between both people, you must be able to show three things:
 - A gain by one party (such as the ability to work full-time outside the home);
 - A corresponding loss by the other party; (such as them needing to quit their job/school to take care of the family); **and**



- That there was no legal reason that would justify the gain or loss (such as, a contract between the partners that created the gain or loss).
- In deciding if one party has received an unfair benefit and how property will be divided between the partners when using a constructive trust, the Court will consider several factors, including:
 - The proportion of wealth that can be attributed to the party's contribution;
 - The mutual efforts made to increase economic wealth for the family;
 - How integrated the finances are of the parties;
 - The actual intents of the parties when they made their contributions;
 - And the priority of the family.
- Generally, common law relationships must last a number of years before a constructive trust action will be successful. If the Court is satisfied that all of these requirements are met, a constructive trust can possibly be ordered. Under constructive trust, the party who suffered the greater loss is entitled to monetary compensation or a share/part of their partner's property. Monetary compensation is more commonly awarded.

Note: The *Family Law Act* deals with orders for **exclusive possession of the family home and household goods**. See **page 7** of this pamphlet.

What Legislation Deals with Common Law Relationships in Alberta?

Family Law Act – Child and Partner Support

Non-married parents, married persons who are separated but not getting a divorce, and adult interdependent partners can all seek child and/or partner support under the Alberta *Family Law Act*.

Child Support

Under the *Family Law Act*, children are **entitled** to support when the child is:

- Under 18 years of age; **or**
- Over 18 and unable to withdraw from their parents' care because of illness, disability, is enrolled in school full-time, or other cause.

* If the child is married or in an adult interdependent relationship, or is living an independent lifestyle, the parents are no longer legally obligated to provide for the child's needs.

Partner Support

Unlike child support, adult interdependent partners are not entitled to partner support. In determining whether to order partner support for an adult interdependent partner, a court will need to consider a variety of factors and circumstances such as whether:



- one party has suffered a significant disadvantage;
- the nature and duration of the relationship;
- the functions performed by each partner during the relationship;
- whether one party has suffered a significant economic disadvantage from the relationship or the relationship breakdown; **and**
- the financial consequences for the care of any children.

Note: It is important that you seek legal advice about your particular entitlement to partner support. Please see our [Child & Spousal Support](#) pamphlet for more information.

Family Law Act – Guardianship, Parenting, & Contact

Guardianship Orders

The adult interdependent partner of the parent of a child may apply for a guardianship order. A guardian of a child may exercise a broad range of **decision-making powers** in respect of that child such as: decisions related to day-to-day care, place of residence, participation in extracurricular activities, cultural, linguistic, religious and spiritual upbringing, consent to any medical, dental and other health-related treatment, and other responsibilities reasonably necessary to carry out guardianship.



The Court will not make a guardianship order without consent of each guardian of the child, the child (if they are 12 years of age or older), and the proposed guardian. When determining whether to grant guardianship, the Court will consider whether it is in the **best interests of the child**, the **suitability** of the adult interdependent partner as a guardian, as well as adult interdependent partner's **ability and willingness** to act as a guardian.

A person has demonstrated an intention to assume the responsibility of a guardian of a child by:

- Being the adult interdependent partner of the other parent at the time of the child's birth or becoming the adult interdependent partner of the other parent after the birth of the child; **or**
- Cohabiting with the other parent for at least 12 months during which the child was born.

Parenting Orders

If an adult interdependent relationship ends, and the adult interdependent partner of the parent became a guardian of the child, the adult interdependent partner can apply for a parenting order to allocate responsibilities and time between the guardians if they do not agree.

Contact Orders

Contact orders provide contact between a child and a person who is not a guardian. Adult interdependent partners who are not guardians of the child require **permission from the Court** when applying for contact orders. When deciding whether to grant permission, the Court will consider the best interests of the child including:

- The significance of the relationship between the adult interdependent partner and the child; **and**
- The need to facilitate contact between the child and adult interdependent partner.

Note: Please see our Custody, Access, & Parenting Time pamphlet for more information.

Family Law Act – Property

Adult interdependent partners can apply to the Court for exclusive possession of household goods and the primary/family home when they apply for a support order.

- **Exclusive possession** means that one party, to the exclusion of the other, is able to reside in the primary/family home and use the household goods that are found in the home.
- A **primary/family home** is defined as a house or part of a house, business, mobile home, residential unit or a suite that is or has been lived in by the parties.
- **Household goods** are defined as any personal property that is owned and enjoyed by one or more of the parties or any children living in the primary/family home for transportation, household, education, recreation, social, or esthetic purposes.



In making an order, the Court may do any one of the following:

- Direct that one of the parties be given exclusive possession of the primary/family home;
- Direct that one of the parties be evicted; **or**
- Make a restraining order against a party to prevent them from coming near or entering the primary/family home (including surrounding property).

In considering the grant of exclusive possession, the Court will consider:

- Whether both parties can find and maintain another place to live;
- The needs of any children living in the home;
- The financial position of each partner;
- Any existing Court orders regarding property or financial support for one or both of the partners; **and**
- Any conditions of a lease involving the primary/family home, if applicable.

Fatal Accidents Act

Adult interdependent partners can make applications under the *Fatal Accidents Act* for damages resulting from the death of their partner. This means that the deceased's adult interdependent partner can step in and sue the person who caused the death if the deceased died as a result of:

- A wrongful act; **or**
- Neglect; **or**
- The failure to perform a legal duty; **and**
- They would have been able to sue the person for injuries if they survived.



The amount of money that can be sued for is set out in the *Fatal Accidents Act*. However, the Court will not award damages if the adult interdependent partner was living separate and apart from the deceased at the time of death.

Insurance Act

Under the *Insurance Act*, the definition of “relatives” includes adult interdependent partners. Under this definition, adult interdependent partners have the same rights and entitlements as people related by blood, marriage, or adoption. There is a separate definition for spouse however and adult interdependent partners may be ineligible for insurance coverage and benefits currently available to spouses, for example, life, auto, or property.

Wills and Succession Act

If an adult interdependent relationship began after February 1, 2012, then any wills the parties had at the beginning of the partnership will remain in effect until they change or revoke them.

The *Wills and Succession Act* applies to wills created after February 1, 2012 and if a person dies without a valid will. If no will exists, distribution of a person's estate with a surviving adult interdependent partner depends on whether the deceased has children and/or grandchildren, as well as whether they have an estranged spouse.

- If the deceased has no children and/or grandchildren, the estate will go to the surviving adult interdependent partner.
- If a person dies with children and/or grandchildren who are:
 - Descendants of the surviving adult interdependent partner, the entire estate will go to the surviving partner.
 - Not descendants of the surviving adult interdependent partner, then the surviving adult interdependent partner is entitled to a prescribed amount, or 50% of the net value of

the estate, whichever is more

- The remainder of the estate is then divided among the descendants according to the *Wills and Succession Act*.
- Even if the deceased was in an adult interdependent partnership at the time of their death, the deceased's estranged spouse may be entitled to a portion of the estate if, at the time of death:
 - The deceased and their separated spouse have not been living separate and apart for more than 2 years;
 - They did not have a declaration of irreconcilability under the *Family Law Act*; **and**
 - The spouses had an agreement regarding their property and its division after the breakdown of their marriage.

Workers Compensation Act

If a worker dies as a result of an accident and leaves a dependent adult interdependent partner, that partner can receive the same benefits that a spouse would receive. The WCB may also pay the partner any additional amount that it views as appropriate.



If someone who would have received Workers Compensation benefits has died and they have an adult interdependent partner who is not being supported and cannot care for themselves, the WCB can pay the adult interdependent partner instead.

Employment Pension Plans Act

The definition of 'partner' for the purpose of the *Employment Pension Plans Act* is **not** the same as an adult interdependent partner. Under the *Employment Pension Plans Act*, benefits are available only to common-law partners because the pension plans must be registered under the *Canadian Income Tax Act*.

Common-law partners, in this Act, are defined as a person who:

- Lives in a **conjugal (marriage-like) relationship** with the taxpayer and either:
 - Has lived with the taxpayer for a continuous period of at least three years; **or**
 - Is the natural or adoptive parent of a child of the taxpayer.

What Type of Federal Legislation Talks About Common-Law Relationships?

Employment Insurance Act

Common-law partners are provided with the same benefits as married spouses under the *Employment Insurance Act* if they have lived together in a marriage-like relationship for at least **12 months**. Adult interdependent partners that are related by blood however are excluded from receiving EI benefits.

Canada Pension Plan

Common-law partners have the same right to benefits from a Canada Pension Plan survivor's pension as spouses would have, as long as they were partners at the time of the contributor's death. If you were widowed more than once, only one survivor's (the larger) pension will be paid. You will need to complete a **Statutory Declaration of Common-Law Union form** to prove your common-law status before applying for your monthly pension. This form can be found online at:

<https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-survivor-pension.html>.

Common-law partners may be eligible to share a pension, which may assist in tax savings. A Spouse's Allowance is also paid to the partners of pensioners for partners between the ages of 60 and 65. Common-law partners can qualify for the Spouse's Allowance if they have been living in the common-law relationship for at least one year.

Income Tax Act

Under the *Income Tax Act*, a common-law partner is defined as:

- a person living in a conjugal relationship with you for at least **12 continuous months, or**
- is the parent of your child by birth or adoption, **or**
- has custody and control of your child and your child is completely dependent on the person for support.



Therefore, for income tax purposes common law couples only need to live together in a conjugal relationship for 1-year and are treated the same as married couples. If you meet the definition of common law partner, you must indicate that you are living common law on your tax return. This is because the Canada Revenue Agency calculates government benefits such as GST rebates based on total household income. You may also be entitled to certain tax deductions and credits depending on your circumstances.

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Legal Resources

Student Legal Services – Family Law Project 11036 88 Ave NW Edmonton, AB T6G 0Z2	Ph: 780-492-8244 Admin: 780-492-2226 Fax: 780-492-7574
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Law student caseworkers provide basic legal information on various topics in family law, such as divorce, separation, parenting time, child and spousal support ("maintenance"), matrimonial property, and adult interdependent relationships ("common law"). Keep in mind that the services available are subject to eligibility criteria, except for legal information and referrals.

Edmonton Community Legal Centre (ECLC) Telus House, South Tower – Second Floor 10020 – 100 Street Edmonton, AB T5J 0N3	www.eclc.ca Ph: 780-702-1725
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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. Much of their legal information can be found on their website, as well as the time, dates, and locations of their public legal education programs. Additionally, ECLC has a fee waiver program if your income and document fall within their guidelines.

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

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

Provincial Court Clerks – Family	Edmonton: 780-427-2743
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Assists with 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.

Lawyer Referral Service	Toll Free Ph: 1-800-661-1095
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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. You will be provided with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure you let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be free and you can discuss your situation and explore options. **Note:** This free half hour is more for consultation and brief advice and is not intended for the lawyer to provide free work.

Centre for Public Legal Education Alberta (CPLA) www.cplea.ca	Ph: 780-451-8764
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CPLA provides detailed legal information online to the Alberta public on various areas of the law. **NOTE:** They do not provide legal assistance or advice or answer specific legal questions.

Dial-a-Law http://clg.ab.ca/programs-services/dial-a-law/	Toll-Free Ph: 1-800-332-1091
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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.

Financial Resources

Alberta Supports Centre (Various Locations) Edmonton Central Location 10242 105 Street NW Edmonton, AB T5J 3L5	Ph: 1-877-644-9992
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Alberta Supports Centre functions to assist individuals and families with accessing various financial, family, and social supports. Such supports include Alberta Works and AISH.

Service Canada (Various Locations) Downtown Location: Main Floor Canada Place 9700 Jasper Avenue Edmonton, AB T5J 4C1	Ph: 1-800-622-6232
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Service Canada is a starting point for individuals seeking to access Federal government services and benefits, such as Employment Insurance and passports.

Other Resources

Maintenance Enforcement Program (MEP)	Ph: 310-0000 ext 780-422-5555 24h Tip Line: 310-0000 ext 780-401-8477
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A government agency that acts as a third party in child, spousal, and partner support transactions. It collects court-ordered support from the payor and forwards the amount to the recipient. MEP also has the authority to enforce the payment of maintenance through certain actions, such as garnishing certain incomes and tax returns, withholding certain registry services, and suspending a driver's licence. Either the payor or recipient can register for MEP. To register, you need to obtain a court order before filling out and submitting specific forms, found on their website:

https://justice.alberta.ca/programs_services/mep/Pages/default.aspx

Workers' Compensation Board (WCB) 9912 107 Street NW Edmonton, AB T5K 1G5	Ph: 1-866-922-9221
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Provides support to employees when an injury to an employee occurs while on the job. When an employee is injured on the job, they have a right to make a claim. If approved, the individual may be entitled to certain benefits, depending on the loss sustained by the individual. To file a claim, you can contact them by phone, or online, at: <https://www.wcb.ab.ca/>.

Emergency Protection Order Program	Ph: 780-422-9222 *If after business hours, contact local police*
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This 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.

Family Violence Info Line	General Info Line - 24 Hour Toll-Free Ph: 310-1818 (no area code) Emergency Financial Support: 1-866-644-5135 Family Violence and Tenancy Concerns: 1-877-644-9992 Sexual Assault Centers: 780-482-4357
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Provides callers with an opportunity to speak with trained staff regarding their situation and options.