

Restraining Orders

A **restraining order** is a court order that orders someone to stay away from you and to stop contacting you. You can apply for a restraining order to stop someone’s vexatious (very annoying or frustrating) conduct – regardless of their relationship to you.

A restraining order may be an option if you are not eligible for an Emergency Protection Order (EPO) or King’s Bench Protection Order (KBPO).

What is the difference between a restraining order and an EPO or KBPO?

There are similarities and differences between restraining orders and Emergency Protection Orders (EPO) or King’s Bench Protection orders (KBPO).

Restraining Orders	Emergency Protection Orders or King’s Bench Protection Orders
For protection against anyone’s vexatious conduct – regardless of their relationship to you	Only for protection from family members and family violence (“Family member” and “family violence” are defined terms in Alberta’s <i>Protection Against Family Violence Act</i> . Family member does not include a dating partner you do not live with, unless you have a child together. Family violence does not include emotional abuse and coercive control.)
Can order the person causing harm to stop contacting you and going near your home, workplace or other places you regularly go	
Cannot order the respondent to move out of a residence where they have a right to live, even if you live there too	<ul style="list-style-type: none">• Can give you exclusive possession of the family home, even if your name is not on the lease or title• Can give the police authority to remove the abusive family member from your family home
Available in emergency situations, without notice to the respondent	
<ul style="list-style-type: none">• You can get an EPO 24 hours a day, 7 days a week.• You can only get a without notice restraining order during regular court hours.	

You should NOT rely on this booklet for legal advice. It provides general information on Alberta law only.

The respondent is the person responding to an application made by the applicant in civil court.

Who can apply for a restraining order?

You can apply for a restraining order against anyone whose conduct is vexatious (very annoying or frustrating) toward you, your children or your property. The person causing harm does not have to be a family member. They could be a roommate, dating partner, co-worker or more.

Vexatious conduct can include:

- a reasonable and legitimate fear for you or your children's safety or property
- conduct that threatens your reputation or privacy
- conduct that is harassing, such as stalking or repeated phone calls

The conduct does not have to be criminal or threatening to get a restraining order.

What does a restraining order say?

A restraining order can order the respondent to:

- stay away from your home, workplace or other places you regularly go
- stop harassing, watching, following, phoning or interfering with you, directly or indirectly

In a restraining order, the court cannot order the respondent to move out of a residence where they have a right to live, even if you live there too. The court can do this through other orders, such as an Emergency Protection Order, King's Bench Protection Order or Exclusive Possession Order.

How to apply for a restraining order?

You must apply for a restraining order in the Court of King's Bench during regular court hours.

In an emergency, you can apply **without notice** to the respondent. This means the respondent will not know you are applying for a restraining order until they receive a copy of the granted order. The court decides if your situation is urgent and serious enough to apply without notice.

If your situation is not urgent, the court will ask you to **give notice** to the respondent. This means you must serve (give) the respondent with the filed court documents at least 10 days before the scheduled court date. The respondent can come to court on that day and share their side of the story with the judge.

There are no fees for filing for a restraining order, unless you are also asking the court for other remedies. For example, if you are applying for a restraining order and asking the respondent to pay you back money they owe you, usual filing fees apply.

Emergency situations without notice to the respondent

1. Fill out the right court forms.

If you are asking for a restraining order against a family member, fill out the **Application for a Restraining Order Without Notice in a Family Law Situation** form. In this form, you must answer several questions and detail why you are asking for a restraining order. You must declare the document is true before a Commissioner for Oaths or Notary Public.

If you are asking for restraining order in any other situation, you must write and swear or affirm an **Affidavit**.

Do not sign the documents until you are with the Commissioner for Oaths. The court clerks are Commissioners for Oaths. You can swear or affirm your documents when you file them at the courthouse.

2. File your forms at the courthouse.

You must file your documents in the Court of King's Bench. For family situations, go to the family counter. For other situations, go to the civil counter.

3. Appear in Justice Chambers.

In court, you will ask a justice (judge in the Court of King's Bench) for the restraining order. The court clerk will tell you which courtroom to go to when you file your documents. When you go to court, you must also bring a copy of the **Restraining Order Without Notice** form for the judge to fill out.



You can find these forms on the Alberta Courts website: bit.ly/3rc9KIq

For a list of locations across Alberta, see the Alberta Courts website: bit.ly/3E0pQLK



An **Affidavit** is a written statement of facts that you swear or affirm before a Commissioner for Oaths or Notary Public. It is evidence in court. The judge treats it the same way as if you were giving oral evidence.

For more information, see the **Evidence in Court: Affidavits** info sheet, available at: www.cplea.ca/courts



To **serve** someone means to officially give them documents in a way that can be proven to the court.



For more information, see the **Serving Documents on an Abusive Party** info sheet, available at www.willownet.ca

4. File the court order at the courthouse.

If the court grants the restraining order, you must file a copy of the completed order at the courthouse. If you only have the original order, the court clerk will make a few copies of it for you to take away.

5. Serve the respondent.

The respondent has a right to know the order made against them. You must arrange for a process server or other person to **serve** a copy of the filed order on the respondent. Do not serve the respondent yourself.

6. File an Affidavit of Service.

Complete and file an Affidavit of Service to prove the respondent received a copy of the order.

7. Give the order to police.

The police can enforce the restraining order if the respondent does not follow it. Give the local police or RCMP a copy of the filed order and the filed Affidavit of Service, if they do not already have them.

8. Go to the review hearing.

The court will hold a review hearing within two weeks of granting the restraining order without notice. At the review hearing, the respondent can respond to the allegations you make. The court can then extend or cancel the restraining order.

Non-emergency situations with notice to the respondent

1. Fill out the right court forms.

You must fill out an **Originating Application** form and an **Affidavit**. If you are asking for a restraining order against a family member and have already started other family proceedings in court, you can use the **Family Application** form and an **Affidavit** instead.

In the application form, you must include:

- the grounds or basis for your claim – why you are asking for a restraining order
- what you asking the court for (for example, “The remedy sought is a restraining order against ... for a period of ...”)
- the evidence you are relying on (for example, “The Affidavit of ... sworn on ...”)
- the laws and rules that apply (for example, in family situations, “Rule 12.33 of the Alberta Rules of Court”)

In the Affidavit, you must include facts about the situation, including dates, and the history and nature of abuse, threats or violence. You should also note if the person causing harm has any weapons. You can attach copies of police reports, 911 calls, medical reports and other documents as exhibits to your Affidavit.

2. File your forms at the courthouse.

You must file your documents in the Court of King’s Bench. The court clerk will help you choose a date for the court hearing and write it on the documents.

3. Serve the respondent with filed documents.

To get a restraining order with notice, you must serve (give) the respondent with copies of the filed court documents at least 10 days before the scheduled court date. If it is not safe for you to personally serve the documents on the respondent, get help from a process server, family member or friend.

The facts in your Affidavit must be true. There are serious penalties for including false or misleading information in an Affidavit.



You can find these forms on the Alberta Courts website.

Family Application:
bit.ly/3rc9Klq

Originating Application:
bit.ly/3jjVegn

For a list of locations across Alberta, see the Alberta Courts website:
bit.ly/3E0pQLK



To **serve** someone means to officially give them documents in a way that can be proven to the court.



For more information, see the **Serving Documents on an Abusive Party** info sheet, available at www.willownet.ca

4. File an Affidavit of Service.

Complete and file an **Affidavit of Service** to prove the respondent received a copy of the court documents at least 10 days before the court date.

5. Appear in Justice Chambers.

In court, you will ask a justice (judge in the Court of King's Bench) for the restraining order. The respondent can also attend and share their story with the justice. The justice will decide whether to grant the order.

Bring with you a copy of the **Restraining Order** form for the judge to fill out.

6. File the court order at the courthouse.

If the court grants the restraining order, you must file a copy of the completed order at the courthouse. If you only have the original order, the court clerk will make a few copies of it for you to take away.

7. Serve the respondent with filed order.

The respondent has a right to know the order made against them. You must arrange for a process server or other person to serve a copy of the filed order on the respondent. Do not serve the respondent yourself.

8. File an Affidavit of Service.

Complete and file an **Affidavit of Service** to prove the respondent received a copy of the order.

9. Give the order to police.

The police can enforce the restraining order if the respondent does not follow it. Give the local police or RCMP a copy of the filed order and the filed Affidavit of Service, if they do not already have them.

How long is a restraining order good for?

Restraining orders can be for as long as necessary. Usually the order says it is good for one year, but it can be for longer or permanently.

A restraining order starts as soon as the court grants it. However, the police cannot enforce the order against the respondent until the respondent has received a copy of it.

What is a mutual restraining order?

A mutual restraining order names two or more people who cannot contact each other. These orders are common where there is evidence both people have contributed to the conflict. Usually everyone named in the order consents (agrees) to the order.

One disadvantage is that it can be difficult to prove one person breached the order since no one can have contact with each other.

You should talk to a lawyer before agreeing to a mutual restraining order.

What if the respondent cannot be found?

There are steps you can take if you cannot find the abusive family member to serve them with court documents. For more information, see CPLEA's **Serving Court Documents info sheet** at www.cplea.ca/courts.



About CPLA

The Centre for Public Legal Education Alberta is dedicated to making the law understandable for Albertans. We provide legal information on a wide variety of topics through our websites, print resources, workshops and more. For more information, visit our website: www.cplea.ca

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**Alberta LAW
FOUNDATION**



Department of Justice
Canada

Ministère de la Justice
Canada

Resources

Find more information about domestic violence and the other info sheets in this series on **WillowNet** – a CPLA website about violence and abuse laws in Alberta. www.willownet.ca

- **Family Violence Info Line: 310.1818**
Get help anonymously. Available 24/7 in over 170 languages.
- **Victim Services Alberta: 780.427.3460 or www.alberta.ca/victim-services-units.aspx**
Connect with local supports.
- **Court and Justice Services:**
www.alberta.ca/court-and-justice-services.aspx
Get help finding court forms or information on the court process.
- **Community Legal Clinics in Alberta:**
www.lawcentralalberta.ca/clinics
Get free legal advice if you earn a low income.
- **Legal Aid Alberta's Emergency Protection Order Program (EPOP): 1.780.422.9222 (Edmonton area) or 1.403.297.5260 (Calgary area) or www.legalaid.ab.ca/services/family-violence-matters/**
Get free legal help applying for an EPO.



We want to know what you think!
To take our one minute survey:

- capture this QR code with your phone camera, or
- go to bit.ly/3g8tby9