

Serving Court Documents

To **serve** a party means to officially give them documents in a way that can be proven to the court. The **parties** are the people involved in the court action.

Overview of Filing and Service Process

1. File documents at the courthouse.

You should go to the courthouse nearest to you. You will need at least **three** copies of the documents you are filing. The court will keep a copy, you need a copy, and you need copies for the other parties. You have two options:

- You can take the original document and several copies to the courthouse. The court will stamp each copy and keep the original.
- You can take the original document and one copy to the courthouse. The court will stamp the copy and give it back to you. Then you can make more copies of it before you serve it.

If you take only the original document to the courthouse to file, the court will file it and charge you for making photocopies of it.

2. Serve copy of filed documents on the other parties.

There are different ways to serve parties, including personally, by recorded mail, by fax or by email. If these methods do not work, you can also ask the court for permission to serve someone substitutionally (in a different way). If you cannot find the party and you have taken reasonable steps to do so, you can ask a judge to allow you to make your request to the court without serving documents on the other party. This is "dispensing with service".

3. Complete an Affidavit of Service and file it at the courthouse.

This document proves you served the documents. You will need to swear it is true in front of a Commissioner for Oaths before you sign it. If someone else, such as a process server, serves the documents, they should swear the Affidavit of Service.

In most court actions, you must serve the other party with the documents you have filed. The other party might be an individual, a trustee, a business, the government or a lawyer. By serving the other party with the documents, the other party knows what you are going to say to the judge and what you are asking the judge to do.

When is service not required?

If the situation is urgent, the applicant can ask the court for an order without notifying the other side. This is a “without notice” or *ex parte* appearance in court. For example, if the health or safety of you or someone else is at risk, then you might not provide notice to the other side. The judge may or may not issue an order during a without notice appearance. If the judge does issue an order, it is usually on a temporary basis.

FAMILY LAW ACTIONS

If there is a risk of family violence, talk to a Family Court Counsellor before you serve documents.

For more information on appearing in court and getting a court order, see CPLEA’s **Court Appearances and Orders** tip sheet at: www.cplea.ca/courts

Types of Service

There are three ways to serve a party:

1. Personally
2. By recorded mail, fax or email
3. Substitutionally

The first two ways above are sometimes called “ordinary service”.

Serving a party **personally** means to hand-deliver the documents to the party. The party is served as soon as someone hands them the papers. You, a family member or friend, or a process server can serve the other party personally.

EXAMPLE Sammy is suing the person who crashed into their car. Sammy files a claim at the courthouse. They find a company online that serves documents. They hire the process server to serve the person with the court documents at their home address. The process server knocks on the door and when the person answers, the process server hands them the documents. The process server writes an **Affidavit of Service**, which sets out where, when and to whom they delivered the documents. The process server swears their *Affidavit of Service* in front of a Commissioner for Oaths and gives it to Sammy. Sammy files the *Affidavit of Service* at the courthouse.

FAMILY LAW ACTIONS

If you are serving documents in a family law action, there are more rules:

- A *Statement of Claim for Divorce* or a *Statement of Claim for Divorce and Division of Family Property* must be personally served on the defendant by someone other than the plaintiff. You cannot personally serve the defendant. A family member, friend or a process server must serve these documents personally on your behalf. Rule 12.55 of the *Alberta Rules of Court* lists when a defendant must be served personally for family law actions. <https://canlii.ca/t/8nhs>
- You cannot serve a document that is starting a family law action by email. You or someone on your behalf (depending on the document) must serve these documents personally on the other parties.
- The *Affidavit of Service* must include a picture of the person served when you serve a *Statement of Claim for Divorce* or *Statement of Claim for Divorce and Division of Family Property*.
- You can apply to serve documents through the **Maintenance Enforcement Program (MEP)**, but there is a fee. You can call 780.422.5555 for more information.

You can also serve a party by **recorded mail or fax**. You need proof of service, such as a delivery receipt for recorded mail or a confirmation report for fax. Attach this document to your Affidavit of Service as an exhibit.

You can serve only some documents by **email**. The following rules apply if you are serving a party by email:

- You cannot serve a document that is starting a court action by email unless the court grants a substitutional order allowing you to do so.
- The other party must have provided an email address for service.
- The other party must receive the document in a form they can use and reference (for example, a scanned document sent as an attachment).
- You must receive a confirmation that the email was delivered.

The *Alberta Rules of Court* set out the rules for ordinary service of documents within Alberta, outside of Alberta but within Canada, and outside of Canada.

Substitutional service is service in some other way because attempts to serve the party personally or by recorded mail or fax have failed.

You must get a court order allowing you to serve a party substitutionally. If you do not get the court's approval, then you may have to serve the documents again.

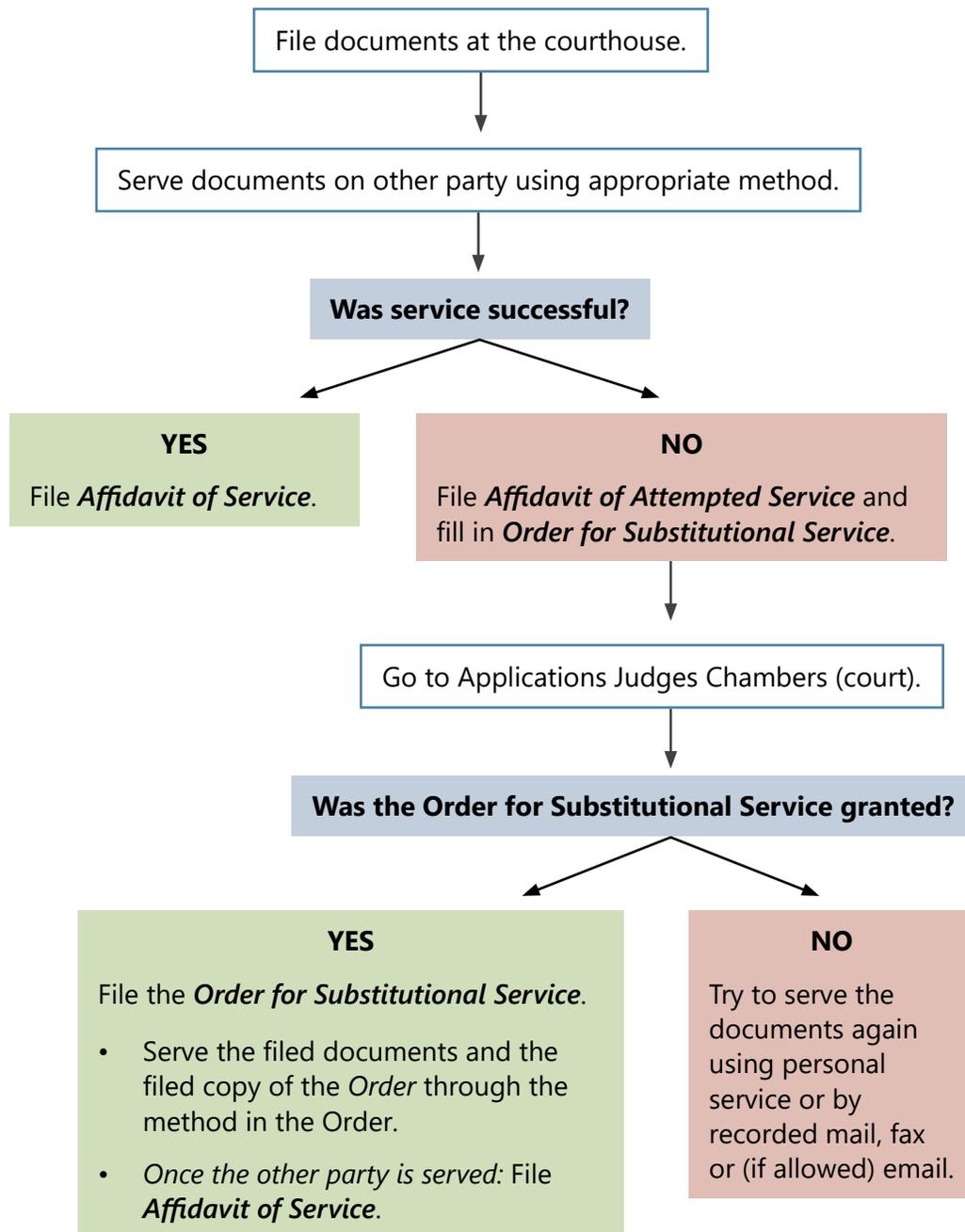
When you apply for an order for substitutional service, you must convince the court (an **applications judge**) that it would be impractical to serve the documents personally, by recorded mail or by fax. You must suggest a way to serve the documents that is likely to bring them to the attention of the party you are serving. You might suggest posting to the door of the party's house, sending a message via Facebook, or service on a person that you know regularly sees the party you are trying to serve.

EXAMPLE Tim is applying for a parenting order. His ex has moved, and he does not know exactly where she is living with the kids now. She is very close with her mother, and her mother has lived in the same house in Red Deer for many years. Tim asks the judge to let him serve his ex by serving the documents on her mother. The court agrees and grants a court order.

An **applications judge** is a judicial officer in the Court of King's Bench with authority to hear and decide on certain types of court orders. They are different from a Court of King's Bench justice or Provincial Court judge.

You can find court forms online at the Alberta Courts website: www.albertacourts.ca. You can also contact Resolution and Court Administration Services for help locating these forms and with the court process generally.

Substitutional Service



Serving Documents Outside Alberta and Canada

If the party you must serve with documents does not live in Alberta, service may be more difficult.

You can serve them:

- using the methods set out in this section
- using the rules set out in the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* if the place where you are serving the party has also signed onto this international agreement
- according to the laws of the place where they are located

If you are serving a party outside of Canada, you need a court order from the Alberta court allowing you to serve that party. When you serve the party with documents, you must include a copy of the court order.

Contact a lawyer for more information about serving documents outside Alberta and Canada.

You can find out more info about the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* by searching for the Convention at: <https://www.hcch.net/>

Deadlines for Service

There are also deadlines for serving a party. These deadlines differ depending on what type of document you are serving and where the other party is located.

REMEMBER Service is complete once the other person has received the documents. You will need to take into account the time to complete service (such as several days for mail to be delivered or for a process server to meet with the person).

Check the rules of the court you are filing documents in to see what the deadlines are to serve those documents. See the end of this document for links to the rules.

How to Find a Party to Serve Them

If you do not know where the other party lives or works, there are many different ways to try to find them:

- Search for the party online. A quick Google search might turn up something.
- Search for the person using social media. Are you friends on Facebook? Are you connected through mutual friends?
- Hire someone to find them for you. You can hire a private investigator to track the party down for you for a fee.
- Contact family, friends and employers. See if anyone knows of the party's current location.
- Request a demographic search. If the party is an individual and lives in Alberta, you can go to a registry and ask them to search motor vehicle records for the person's last registered address. You will have to provide the person's full name and any other information you have, such as birthdate and last known address. The fee for this search changes depending on the registry.
- Request a corporate search. If the party is a corporation or partnership in Alberta, you can go to a registry and ask them to search the corporate database for the business' registered office. The fee for this search changes depending on the registry.

Resources

For more information about court processes, including filing and serving documents:

Alberta Courts website

Find information on each court and areas of law, including information for self-represented litigants. Click on the level of court and area of law that apply to you.

www.albertacourts.ca

Alberta Rules of Court

See Part 11 for rules on serving documents filed in the Court of King's Bench and the Alberta Court of Appeal. See Part 12 for more rules for family law. See Part 14 for more rules for the Court of Appeal.

<http://canlii.ca/t/8nhs>

Provincial Court Procedures (Family Law) Regulation

See for rules on serving family law documents filed in the Provincial Court.

<http://canlii.ca/t/82v1>

Provincial Court Civil Procedure Regulation

See Part 12 for rules on serving civil documents filed in the Provincial Court.

<http://canlii.ca/t/95wj>

CPLEA

Information booklets, FAQs and videos on many areas of the law and court process in Alberta.

www.cplea.ca/resources

LawCentral Alberta (a CPLEA website)

List of legal clinics and organizations in Alberta providing free or low-cost legal services.

www.lawcentralalberta.ca/clinics

List of more resources for preparing for court.

www.lawcentralalberta.ca/en/preparing-court

Court and Justice Services (CJS)

Government service providing resolution and court support for Albertans.

alberta.ca/court-and-justice-services.aspx

Alberta Law Libraries

Access to legal information and resources.

lawlibrary.ab.ca