

Serving Documents on an Abusive Party

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

This info sheet addresses five frequently asked questions about serving documents when you are experiencing domestic violence.

Do I have to include my address and phone number on court documents before I serve them?

Are you worried about the person causing harm having your contact information? If yes, you can put down the address of a trusted family member, a friend or your employer. Make sure that person knows you used their address as court documents will be served there. You do not have to include your phone number.

Do I always have to serve documents on the other party?

Yes, unless your court appearance is a type that is automatically allowed to happen without notice. The court also has the power to make orders changing the service requirements for documents.

Applying to the court for an order on a **without notice** basis means you do not have to give the other person notice of the court proceeding. Without notice applications are usually for urgent or unsafe situations. For example, you can apply for an Emergency Protection Order (EPO) without notice to the person causing harm if you want them to stay away from you.

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



For more information about how and when to serve someone, see CPLEA's **Serving Court Documents** info sheet at www.cplea.ca/courts

The court will decide if your situation is urgent or unsafe. If they decide yes, they will grant an interim (temporary) order that lasts until a review hearing. At the review hearing, the other person can come to court to tell their side of the story. If the court decides the situation is not urgent or unsafe, you will have to schedule another court appearance and serve the court documents on the other person.

You can apply for the following court orders without notice to the other person:

- Emergency Protection Order
- applications to waive notice requirements for the following moves under *Canada's Divorce Act*
 - change in residence by a parent
 - relocation of a parent
 - move by a person having contact with a child that will significantly impact the child's relationship with the person
- interim parenting orders (if the judge agrees)

You must apply for most other court order **with notice** to the other person. This includes applications for divorce, parenting orders, child support, spousal or partner support, and King's Bench Protection Orders.

Keep reading to learn more about how to safely serve the other party.

Do I have to see the person causing harm to serve them documents?

No.

Some family court documents must be served personally on the other person. This means someone must hand deliver the court documents. But that person does not have to be you. In fact, you are not allowed to personally serve some documents yourself, such as a Statement of Claim for Divorce. You must ask a third party to do so for you, such as a family member, friend, lawyer or process server.

A **process server** is a person or company that serves documents on your behalf for a fee. You can find process servers by searching online. Make sure you ask about their fees. You must give the documents to the process server, along with the name and a photo of the person to be served. Once they serve the documents, the process server will

complete an Affidavit of Service to prove service. They will give the completed document to you and you must file it at the courthouse.

An **Affidavit of Service** is a court document sworn or affirmed by the person who served another person with court documents. The document proves to the court that the documents were served.

What if I am worried about what the other person will do when they receive the documents?

Think about how the other person will respond when they receive the court documents. Do you think they will be upset? If you are worried about the safety of you or your family, take steps before serving the court documents. If you do not have a safety plan, think about making one.

What if I am having trouble serving the other person?

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.

What if my situation is urgent and I cannot find the other person?

You can ask the court if you can apply for the court order without notice to the other person. For example, if the safety of you or your family is at risk and you are fleeing an abusive relationship, you may be able to ask the court for a parenting order without serving notice of the court application on the person causing harm. The court only grants these requests in urgent or unsafe situations.

If there is a risk of family violence, talk to a Family Court Counsellor before serving documents. Or talk to a lawyer at a legal clinic in your area.



For more information about **safety plans**, see the **Planning to Leave** info sheet at www.willownet.ca

Or contact Alberta's **Family Violence Info Line** at 310.1818 from anywhere in the province.

For more information about **substitutional service**, 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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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