**Form FL‑7.1** [Rule 12.121(8)(c)]

|  |  |
| --- | --- |
| COURT FILE NUMBER | Clerk’s Stamp |
| COURT | COURT OF QUEEN’S BENCH OF ALBERTA |
| JUDICIAL CENTRE |  |
| PLAINTIFF  (DEFENDANT BY COUNTERCLAIM) |  |
| DEFENDANT  (PLAINTIFF BY COUNTERCLAIM) |  |
| DOCUMENT | **COUNTERCLAIM FOR DIVORCE  AND DIVISION OF MATRIMONIAL PROPERTY** |

|  |  |
| --- | --- |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT |  |

**NOTICE TO PLAINTIFF**

You are being sued. You are the Defendant by Counterclaim.

Go to the end of this document to see what you can do and when you must do it.

*(NOTE: This form should be used only by spouses to whom rule 12.121 applies. All other spouses should use Form FL-7 instead.)*

*[This form may be filed in addition to a Statement of Defence (FormFL-4.1) or a Demand for Notice (Form 13) and may be used when a Statement of Claim for Divorce, a Statement of Claim for Divorce and Division of Matrimonial Property (with or without an additional claim for unjust enrichment), or a Statement of Claim for Division of Matrimonial Property (with or without an additional claim for unjust enrichment) has been served on you.]*

**DIVORCE ACT CLAIM**

**THE PARTIES**

1. (1) (a) The date of the marriage was:

(b) The place of the marriage was:

(2) (a) The parties started to cohabit on:

(b) The parties ceased cohabiting on:

(3) Particulars respecting the Defendant:

Address:

Date of birth:

Place of birth:

Surname at birth:

Surname at the time of marriage:

Gender at the time of marriage:

*(Male/Female/Another gender)*

Marital status at the time of marriage:

(4) Particulars respecting the Plaintiff:

Address:

Date of birth:

Place of birth:

Surname at birth:

Surname at the time of marriage:

Gender at the time of marriage:

*(Male/Female/Another gender)*

Marital status at the time of marriage:

**RESIDENCE**

2. The Plaintiff (or the Defendant) has been habitually resident in the Province of Alberta for at least one year immediately preceding the date of this Counterclaim.

**GROUNDS**

3. The Defendant is seeking a divorce on the grounds of the breakdown of the marriage by reason of *(check all boxes that apply)*:

the parties are now separated and will have been separated for at least one (1) year at the determination of the divorce proceeding;

the Plaintiff has, since the celebration of the marriage, committed adultery;

the Plaintiff has, since the celebration of the marriage, treated the Defendant with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

**RECONCILIATION**

4. There is no possibility of reconciliation.

**BARS TO DIVORCE**

5. (1) There has been no collusion in relation to this divorce action.

(2) The Defendant has not connived at or condoned the grounds complained of prior to bringing this divorce action. (use only if the grounds are under paragraph 8(2)(b) of the *Divorce Act (Canada)*)

**CHILDREN**

6. (1) The particulars of each child of the marriage (which includes a child of one spouse to whom the other spouse stands in the place of a parent) are as follows:

*(List all dependent children involved in this proceeding, even if no claims are being made in relation to those children.)*

     , born      ; and

     , born      .

(2) The Defendant proposes parenting arrangements for each child as follows:

*(Describe the proposed allocation of parenting time and decision-making responsibility between the parties.)*

(3) If written notice of a change of residence or relocation is required to be given under section 16.8 or 16.9 of the *Divorce Act* (Canada), the Defendant proposes that notice be given as follows:

(a) The Plaintiff will provide written notice to the Defendant by: *(specify how the written notice will be delivered to the Defendant, e.g. by mail, in person, by email, etc.)*

(b) The Defendant will provide written notice to the Plaintiff by: *(specify how the written notice will be delivered to the Plaintiff, e.g. by mail, in person, by email, etc.)*

(4) The Defendant proposes financial arrangements for each child as follows:

**AGREEMENTS**

7. The parties have made an agreement regarding the parenting arrangements or support of the children or support of each other, as follows: *(provide date of agreement and summarize details)*

**COURT PROCEEDINGS**

8. (1) The details of any other court proceeding in regard to the marriage, parenting arrangements and support of the children or support of the parties are as follows:

[provide details]

(2) The details of any

(a) court proceedings for a civil or family restraining order or a protection order under the *Protection Against Family Violence Act*,

(b) court proceedings, agreements or measures relating to child protection, or

(c) proceedings, undertakings or recognizances relating to any matter of a criminal nature

involving the parties, and the details of any orders in effect relating to any of these matters, are as follows:

[provide details]

**SPOUSAL SUPPORT**

9. The Defendant is claiming spousal support from the Plaintiff for the following reasons:

**OR**

9. The Defendant is not claiming spousal support from the Plaintiff.

**OR**

9. The Defendant proposes spousal support for the Plaintiff as follows, for the following reasons:

**MATRIMONIAL PROPERTY ACT CLAIM**

**REQUIREMENTS FOR APPLICATION**

*(NOTE: All applicable requirements of the Matrimonial Property Act must be met by the applicant. See in particular section 1 of the Act for definitions, section 3 for residence requirements, section 5 for circumstances required for applications, section 6 for time requirements and section 11 for requirements where one party is deceased.)*

10. Check all boxes that apply:

The parties are habitually resident in Alberta.

The last joint habitual residence of the parties was in Alberta.

The habitual residence of the parties at the date of marriage was in Alberta, and the parties have not since the marriage established a joint habitual residence.

A statement of claim for divorce has been issued in Alberta.

One spouse is deceased.

**PROPERTY**

11. Since the marriage, the parties have acquired property in their names, either jointly or separately. The particulars of all property will be set out in the matrimonial property statements to be filed in accordance with the *Matrimonial Property Act*.

**AGREEMENTS**

12. The parties have made an agreement regarding the matrimonial property as follows:

**EXEMPTIONS**

13. The Defendant claims the following exemptions for the reasons indicated:

**DIVISION OF PROPERTY**

14. Check the box that applies:

The Defendant claims an equal division of the matrimonial property.

OR

The Defendant claims an unequal division of the matrimonial property as follows: *(describe how the Defendant proposes to divide the property and the reasons why unequal division is claimed)*

*(In a case where the Defendant wishes to combine a claim for division of matrimonial property with a claim for unjust enrichment, add the following clause)*

**UNJUST ENRICHMENT CLAIM *(if applicable)***

15. The Defendant is making a claim of unjust enrichment, the particulars of which are as follows:

**REMEDY SOUGHT IN THE DIVORCE ACTION**

16. The Defendant makes the following claims: *(check all boxes that apply)*

divorce judgment;

parenting arrangements as proposed above;

child support as proposed above;

retroactive child support;

support for the Defendant;

support for the Plaintiff;

retroactive spousal support;

a restraining order;

other relief:  (specify any other relief being sought)

costs.

**REMEDY SOUGHT IN THE MATRIMONIAL PROPERTY ACTION**

17. The Defendant makes the following claims in the matrimonial property action: *(check all boxes that apply)*

an order for the equal distribution of all of the property acquired by the Plaintiff and Defendant, either jointly or separately;

an order for the unequal distribution of all property acquired by the Plaintiff and Defendant, in the manner claimed herein;

an order declaring certain property exempt from distribution as claimed above;

an order for the allocation of the following specific property to the parties:

a matrimonial home exclusive possession order;

an order for the exclusive use of certain household goods;

occupation rent;

a preservation order;

other relief: (specify any other relief being sought)

costs of this action.

**REMEDY SOUGHT IN THE ACTION FOR UNJUST ENRICHMENT *(if applicable)***

18. The Defendant makes the following claims in the action for unjust enrichment: *(list all remedies being sought)*

**Statement of Defendant**

I, [name], the Defendant, certify to the Court that I am aware of the following duties imposed on me by sections 7.1 to 7.5 of the *Divorce Act* (Canada):

1. I will exercise any parenting time, decision‑making responsibilities or contact with any child(ren) of the marriage in a manner consistent with their best interests.

2. I will protect any child(ren) of the marriage from conflict arising from these legal proceedings, to the best of my ability.

3. I will try to resolve the matters that may be the subject of an order under the Act through a family dispute resolution process, to the extent that it is appropriate to do so.

4. I will provide complete, accurate and up‑to‑date information if required to do so under the Act.

5. If I am subject to an order made under the Act, I will comply with the order until it is no longer in effect.

DATED at [City] Alberta, this [date] day of [month], 20[year].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Defendant

**Statement of Lawyer**

*(where Defendant has a lawyer)*

I, [name], the lawyer for the Defendant, certify to the Court that I have complied with the requirements of section 7.7 of the *Divorce Act* (Canada).

DATED at [City] Alberta, this [date] day of [month], 20[year].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lawyer for the Defendant

|  |
| --- |
| **NOTICE TO THE PLAINTIFF**  You only have a short time to do something to defend yourself against this claim:   * 20 days if you are served in Alberta * 1 month if you are served outside Alberta but in Canada * 2 months if you are served outside Canada   You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of Queen’s Bench at      , Alberta, AND serving your Statement of Defence or Demand for Notice on the Defendant’s address for service.  **WARNING**  If you do not file and serve a Statement of Defence or a Demand for Notice within the time period, you risk losing the ability to have your side heard in the lawsuit. If you do not file, or do not serve, or are late in doing either of these things, a court may grant a Divorce Judgment and other relief to the Defendant in the Counterclaim. |