

## INSTRUCTIONS FOR WAIVER OF APPEAL PERIOD

A Divorce Judgment, like any Order made by the court, can be appealed. There is a time limit for filing an appeal. In the case of a Divorce Judgment, this time limit is 30 days.

The *Divorce Act* imposes a delay between the time that the Judgment is granted and when it takes effect, so that people do not re-marry while the time limit is still running to appeal the divorce from their previous spouse. Once the Divorce Judgment takes effect (31 days after it has been granted), the Clerks will issue a Certificate of Divorce, which is the document that must be presented to get a marriage license.

The *Divorce Act*, section 12 says:

- 12(1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgment granting the divorce is rendered.
- (2) Where, on or after rendering a judgment granting a divorce,
- (a) the court is of the opinion that by reason of special circumstances, the divorce should take effect earlier than the thirty-first day after the day on which the judgment is rendered, and
  - (b) the spouses agree and undertake that no appeal from the judgment will be taken, or any appeal from the judgment was taken has been abandoned, the court may order that the divorce takes effect at such earlier time as it considers appropriate.

In order to have the Divorce Judgment take effect immediately, both the spouses must give up their ability to appeal the judgment. There are two requirements:

1. The judge must be satisfied that special circumstances exist.
2. Each party must file an **Undertaking Not to Appeal Divorce Judgment**. The signing of the Undertaking by the party must be witnessed and the witness must sign an Affidavit of Execution.

The special circumstances must be set out in an extra paragraph added to the Affidavit of Applicant, or in a separate Affidavit.

If you are not sure whether your situation would be considered special circumstances, you should talk to a lawyer.

In addition, the wording of the preamble and paragraph 1 of the Divorce Judgment must be changed to reflect that the Judgment takes effect earlier than 31 days. The Divorce Judgment included with these instructions is for parties without children. If there are children of the marriage, you will need to modify the preamble and paragraph 1 of the Divorce Judgment and Corollary Relief Order.

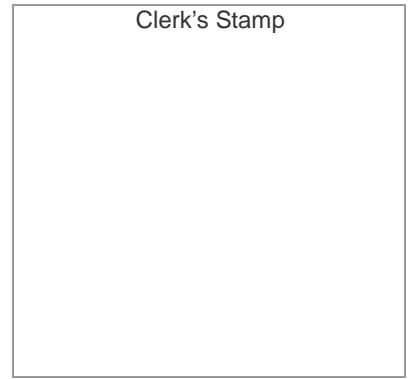
COURT FILE NUMBER \_\_\_\_\_

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE \_\_\_\_\_

PLAINTIFF \_\_\_\_\_

DEFENDANT \_\_\_\_\_



DOCUMENT **Undertaking Not to Appeal  
Divorce Judgment**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Full Address)*

*( )*  
*(Daytime Telephone)*

I, \_\_\_\_\_, agree and undertake that no appeal will be  
*(Name of Plaintiff / Defendant)*  
taken by me from the judgment granting a divorce in this proceeding.

DATED at \_\_\_\_\_, Alberta, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature of witness*

\_\_\_\_\_  
*Signature of Plaintiff / Defendant*

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_, of \_\_\_\_\_, Alberta  
*(Name of Witness)* *(City / Town)*

SWEAR / AFFIRM AND SAY THAT:

1. I was personally present and did see \_\_\_\_\_  
*(Name of person whose signature was witnessed)*  
named in the within document,

who is personally known to me to be the person named therein

**OR**

who identified herself to me by means of photographic identification

duly sign and execute the same for the purposes named therein

2. The document was executed at \_\_\_\_\_, Alberta, and I am the  
subscribing witness thereto.

**Sworn / Affirmed before me**

on \_\_\_\_\_, 20 \_\_\_\_\_  
at \_\_\_\_\_, Alberta.

\_\_\_\_\_  
Commissioner for Oaths  
in and for the Province of Alberta



\_\_\_\_\_  
*(Signature of witness)*

ID Verified \_\_\_\_\_

Clerk's Stamp

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

PLAINTIFF

DEFENDANT

DOCUMENT

**DIVORCE JUDGMENT  
(WITHOUT ORAL EVIDENCE)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

DATE ON WHICH JUDGMENT WAS GRANTED: \_\_\_\_\_

LOCATION OF HEARING OR TRIAL: \_\_\_\_\_, **Alberta**

NAME OF JUDGE WHO GRANTED THIS JUDGMENT: \_\_\_\_\_

UPON the Statement of Claim coming on before the Court this day; AND UPON READING the pleadings, and the Affidavit of \_\_\_\_\_;

AND UPON the Court being of the opinion that, by reason of special circumstances, it is in the public interest for the divorce to take effect earlier than the 31st day after the day on which the judgment is rendered; AND UPON the Court being advised that the parties to this divorce proceeding agree and undertake that no appeal from this judgment will be taken.

**IT IS HEREBY ADJUDGED:**

THAT the Court grants a Judgment of Divorce between the Plaintiff and the Defendant, who were married on \_\_\_\_\_ at \_\_\_\_\_,  
(Date) (City, Province [and country, if not Canada])  
the divorce to be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Justice of the Court of Queen's Bench of Alberta

Consent provided for matter to proceed  
without oral evidence and approved  
as to form by:

Consent provided for matter to proceed  
without oral evidence and approved  
as to form by:

\_\_\_\_\_  
Plaintiff / Solicitor for Plaintiff  
(if Plaintiff signs, attach Affidavit of Execution)

\_\_\_\_\_  
Defendant / Solicitor for Defendant  
(if Defendant signs, attach Affidavit of Execution)

**THE SPOUSES ARE NOT FREE TO REMARRY UNTIL THIS JUDGMENT TAKES EFFECT, AT WHICH TIME EITHER SPOUSE MAY OBTAIN A CERTIFICATE OF DIVORCE FROM THIS COURT. IF AN APPEAL IS TAKEN FROM THIS JUDGMENT, IT MAY DELAY THIS JUDGMENT TAKING EFFECT.**

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_, of \_\_\_\_\_, Alberta  
*(Name of Witness for Plaintiff's signature) (City / Town)*

SWEAR / AFFIRM AND SAY THAT:

1. I was personally present and did see \_\_\_\_\_  
*(Name of Plaintiff)*  
named in the within document,  
 who is personally known to me to be the person named therein  
**OR**  
 who identified herself to me by means of photographic identification  
duly sign and execute the same for the purposes named therein

2. The document was executed at \_\_\_\_\_, Alberta, and I am the  
subscribing witness thereto.

**Sworn / Affirmed before me**

on \_\_\_\_\_, 20 \_\_\_\_  
at \_\_\_\_\_, Alberta.

\_\_\_\_\_  
Commissioner for Oaths  
in and for the Province of Alberta



\_\_\_\_\_  
*(Signature of witness)*

ID Verified \_\_\_\_\_

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_, of \_\_\_\_\_, Alberta  
*(Name of Witness for Defendant's signature) (City / Town)*

SWEAR / AFFIRM AND SAY THAT:

1. I was personally present and did see \_\_\_\_\_  
*(Name of Defendant)*  
named in the within document,  
 who is personally known to me to be the person named therein  
**OR**  
 who identified himself to me by means of photographic identification  
duly sign and execute the same for the purposes named therein

2. The document was executed at \_\_\_\_\_, Alberta, and I am the  
subscribing witness thereto.

**Sworn / Affirmed before me**

on \_\_\_\_\_, 20 \_\_\_\_  
at \_\_\_\_\_, Alberta.

\_\_\_\_\_  
Commissioner for Oaths  
in and for the Province of Alberta



\_\_\_\_\_  
*(Signature of witness)*

ID Verified \_\_\_\_\_