

## Changes to the *Divorce Act*: Relocation

### What is relocation?

Amendments to the *Divorce Act* impose requirements on individuals who have a legal relationship with a child when they change their residence. If a change of residence will have a significant impact on the child's relationships, it will be considered a "relocation."

Not every change of residence will be considered a "relocation" under the *Divorce Act*. This is important. Although all changes of residence require notice, the notice requirements are different for relocations. In addition, if a person proposes to relocate with a child, a person served with notice has a right to object, and may prevent the relocation from taking place.

A change of residence is a "relocation" if it will be undertaken by: 1) a child, or by a person who has parenting time, decision-making responsibility, or a pending application for a parenting order with respect to that child; and 2) it is likely to have a significant impact on the child's relationship with a person with decision-making responsibility, parenting time, contact under a contact order, or a pending application for a parenting order with respect to that child.

### If a person plans to change residences or relocate, what notice does he or she have to provide?

The amendments to the *Divorce Act* require individuals to provide notice of their change of residence or relocation, even if the child's residence will stay the same.

### Notice requirements for changes in residence that are not "relocation"

A person with decision-making responsibility or parenting time, with respect to a child who intends to change his or her residence or the child's residence, must notify every other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child. The *Divorce Act* does not specify how much notice is required when the change in residence is not considered a "relocation."

A person with contact under a contact order must provide written notice to every person with decision-making responsibility or parenting time with respect to that child. If the change in residence is likely to have a significant impact on their relationship with the child, notice must be provided **60 days** before the change in residence occurs, and must include a proposal as to how they will continue to exercise contact, going forward.

Notice of a change in residence must be provided in writing, and must include the date the change is expected to occur, the new address and contact information, or that of the child if applicable.

### Notice requirements for proposed relocations

A person who has decision-making responsibility or parenting time with respect to a child must provide notice of the proposed relocation to every person with decision-making responsibility, parenting time, or contact under a contact order, with respect to a child. Notice must be provided at least **60 days** before the proposed relocation.

The notice must include 1) the expected date of the relocation; 2) the address of the new residence and contact person of the person or child; and 3) a proposal for how parenting time, decision-making responsibility or contact will be exercised, given the relocation.

**IMPORTANT:**  
These changes to the *Divorce Act* come into force March 1, 2021.

### When does the *Divorce Act* apply?

The *Divorce Act* is a federal law that applies to legally married couples who divorce. The *Children's Law Act*, which is a Yukon law, still applies to couples who never married, when defining their legal rights and responsibilities with respect to their children.



#### Yukon Public Legal Education Association

Tutshi Building: 2131 Second Avenue, #102, Whitehorse, Yukon Y1A 1C3  
phone: 867.668.5297 toll-free 1.866.667.4305 e-mail: legalinfo@yplea.com  
www.yplea.com

### Exceptions to notice requirements

The court can waive or modify notice requirements if it is satisfied that it is appropriate to do so, including where there is risk of family violence. A person can apply to the court to waive notice without having to notify any other person.

A provision that waives notice requirements can also be included in a parenting order, even before a person plans to relocate or change residence.

### Relocating with a child of the marriage

The relocating party must meet conditions in addition to providing notice if he or she plans to relocate with the child. He or she will be permitted to relocate with the child, if either: 1) no person with parenting time or decision-making responsibility with respect to the child has objected within 30 days of notice being served, and no court order prohibits the relocation; or 2) the relocating party has a court order authorizing the relocation.

### Objections to proposed relocations with children

A person with decision-making responsibility or parenting time may object to a proposed relocation. He or she must object within 30 days of receiving notice, or the relocation may be permitted. There are two ways to object:

1) by using a standard form, which should include the reasons for objecting and views on the relocating party's proposal for parenting time, decision-making responsibility or contact; or 2) by applying to court to oppose the relocation.

### What happens if someone objects?

If the proposed relocation is objected to, the relocating party must obtain a court order that authorizes him or her to relocate. This involves either filing a court application, or responding to a court application that has been filed by the objecting party.

### The best interests of the child

When determining whether to authorize a relocation, a court's primary consideration is the "best interests of the child." In determining whether a relocation is in the best interests of the child, the amendments to the *Divorce Act* require the court to look at specific factors in addition to those they are normally required to consider when making parenting and contact orders (see Info Sheet 11):

- the reasons for the relocation;
- the impact of the relocation on the child;
- the amount of time spent with the child, and level of involvement by each person;
- whether proper notice was provided by the relocating party;
- whether any order, agreement, or arbitration award specifies the geographic area the child is to reside in;
- the reasonableness of the proposal of the person who is relocating; and
- whether each person has complied with his or her legal obligations, and the likelihood of future compliance.

The court must not consider whether the person who proposes to relocate the child would relocate without the child if relocation is prohibited.

Author: Megan É. Whittle and Emma Dickson

For information on the *Divorce Act* go to  
<https://laws.justice.gc.ca/eng/acts/D-3.4/index.html>