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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **COMMON-LAW PROPERTY**

**version: 2010**

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## INTRODUCTION

Couples living together in a committed relationship without being married are often referred to as being in a common-law relationship. Common-law partners do not have the same rights or obligations as married persons. The *Matrimonial Property Act*, the provincial law which governs the division of property of married people **does not apply to common-law partners**.

### 1. Common-law Relationships and the *Adult Interdependent Relationships Act*

Common-law relationships in Alberta are set out in the *Adult Interdependent Relationships Act*. The Act covers committed personal relationships between people that are not married to each other, where two people agree to share emotional and economic responsibilities.

Two factors define an adult interdependent relationship:

- a. An adult interdependent partner is a person who is involved with another person in an unmarried relationship of interdependence where they:
  - i. Share one another's lives;
  - ii. Are emotionally committed to one another; and
  - iii. Function as a domestic and economic unit.
- b. To be considered adult independent partners under the Act, partners must fall under one of three categories:
  - i. Living in an interdependent relationship for at least 3 years;
  - ii. Living in an interdependent relationship of some permanence when there is a child of the partnership through birth or adoption; or
  - iii. Entered into an adult interdependent partnership agreement.

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### 2. Adult Interdependent Partnership Agreements

Two people who live or intend to live in an adult interdependent relationship may enter into an adult interdependent partner agreement at any time. Two people who are related to each other by blood or adoption **must** enter into a partner agreement in order to become adult interdependent partners.

### 3. Restrictions

- a. A person cannot have more than one adult interdependent partner at one time.
- b. A married person cannot become an adult interdependent partner while living with his or her spouse.
- c. Individuals under 16 cannot enter into an adult interdependent partner agreement without consent of a guardian.
- d. An agreement must be made without fraud or duress.

### 4. Terminating an Adult Interdependent Partnership

An adult interdependent partnership ends when any of the following happen:

- a. The partners sign a written agreement stating that they intend to live separate and apart, without the possibility of getting back together ('reconciliation').
- b. The partners live separate and apart for more than one year or both partners intend that the adult interdependent relationship end.
- c. The partners marry each other or one of them marries or enters into an adult interdependent relationship with a third party.

## PROPERTY RIGHTS FOR COMMON-LAW COUPLES

### 1. General

The general rule is that when common-law couples separate, each party keeps the property bought during the relationship that they paid for or that is registered in their name. Unlike the

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*Matrimonial Property Act*, there is no presumption of equal division of property. There are a few important exceptions to this rule:

### 2. Land held in joint names

Where parties have bought property together and both parties are registered in title, both parties are legal owners. One party cannot sell the property without the consent of the other.

Either party can apply for a court order from the Court of Queen's Bench for the physical division of the land, a sale of all or part of the land, division of the proceeds from the sale of the land between the co-owners of land, or a sale of the interest of one co-owner to another. Note that this applies only to land located in Alberta. Alternatively, the parties can agree one party will purchase the other party's share of the property.

### 3. Gifts

Gifts given from one partner to another belong to the recipient if they can show the court that the property was clearly a gift. To do this you must prove that your partner meant for it to be a gift, physically gave it to you, and you accepted it.

### 4. Equity

When it would be unfair for one party to keep property they acquired during the relationship, it may be possible to ask the Court to divide the property in a different way. There are a few situations where this happens:

Resulting Trust: Is helpful if a partner helped to pay for property that ended up in the other partner's name. This will arise if the parties had an agreement that they would share in the ownership of the property even though it was only in one partner's name. Also, if there is no agreement, Courts will look at how the partners handled the property before the separation, to see if they truly intended for ownership to be shared.

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**Constructive Trust:** A Court can order a constructive trust if one person unfairly benefits or profits from the acts of another. This is called 'unjust enrichment'. For instance, often one partner works to keep the house and children in order to allow the other partner to work outside the home. The partner working outside the home can then use their salary to pay down a mortgage, buy assets, and build savings for retirement. Although both partners contributed to the relationship, only one partner has acquired assets. In cases like this Courts recognize that there must be some consideration given to the non-financial contribution of the other partner.

In order to get a Court to recognize 'unjust enrichment' and make a property distribution, you must be able to show three things:

- a. A gain by one party;
- b. A corresponding loss by the other party; and
- c. That there was no legal reason that would justify the gain or loss (For example, a contract between the partners creating the gain or loss)

In deciding if one party has received an unfair benefit, and how property will be divided between the partners through a constructive trust, the Court will also consider:

- a. Whether there was a reasonable understanding between the partners that the party who suffered the loss would receive a share of the property;
- b. If there was a connection between the type of property and the services provided by the party who suffered the loss; and
- c. The length of the relationship.

Generally, common law relationships must last a number of years before a constructive trust action will be successful. If the court is satisfied that all of these requirements are met, a constructive trust can be ordered. The party who suffered the loss is entitled to compensation or a share in their partner's property.

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### **COMMON-LAW PROPERTY IN ALBERTA LEGISLATION**

#### **1. Family Law Act**

Adult interdependent partners can apply to the Court for exclusive possession of household goods and the primary home. Household goods are defined as any personal property that is owned and enjoyed by one or more of the parties or any children living in the primary home. The home is defined as a house or part of a house, business, mobile home, residential unit or a suite that is or has been occupied by the parties.

In making an order, the Court may do any one of the following:

- a. Direct that one of the parties be given exclusive possession of the primary home;
- b. Direct that a partner be evicted;
- c. Make a restraining order against a partner to prevent them from coming near or entering the primary home (including surrounding property).

The Court will consider:

- a. Whether both parties can find and maintain another place to live;
- b. The needs of any children living in the home;
- c. The financial position of each partner;
- d. Any existing Court orders regarding property or financial support for one or both of the partners;
- e. Any conditions of a lease involving the primary home, if applicable.

#### **2. Dependants Relief Act**

For the purposes of this Act, Adult Interdependent Partners are included as dependants under their deceased partner. If you rely on your Adult Interdependent Partner financially, and they pass away, you are entitled to support from your partner's estate just as if you had been married. This Act applies when a partner dies,

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with or without a will, and fails to make adequate provisions for the maintenance and support of his/her dependants. The Court can divide the deceased person's estate in such a way as to ensure the deceased's dependants, including adult interdependent partners, are provided with adequate support.

### **3. *Fatal Accidents Act***

Adult interdependent partners can make applications under this Act for damages resulting from the death of their partner. This means that if a person dies as a result of a wrongful act, neglect, or the failure to perform a legal duty, and they would have been able to sue the person for injuries if they survived, the deceased's adult interdependent partner can step in and sue the person who caused the death. The amount of money that can be sued for is set out in the Act.

### **4. *Insurance Act***

In this Act, "relatives" are defined as including adult interdependent partners, and therefore they have the same rights as people related by blood, marriage, or adoption. Adult interdependent partners will be eligible for insurance coverage currently available to spouses, for example, life, auto, or property.

### **5. *Wills Act***

A person's will becomes invalid if that person enters into an adult interdependent partnership, unless the person made the will knowing that they were entering into a partnership.

### **6. *Intestate Succession Act***

In Alberta, if a person dies without a will, this Act outlines how their property is to be distributed.

If a person dies with a surviving adult interdependent partner but no lineal descendants (children or grandchildren), the estate goes to the surviving adult interdependent partner.

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If a person dies with a surviving adult interdependent partner and lineal descendants (children or grandchildren):

- a. If the total estate is worth less than \$40 000, the surviving partner gets the entire estate.
- b. If the estate is worth more than \$40 000, the surviving partner gets the first \$40 000. If there is one child, the surviving partner gets half of the remaining estate, if there is more than one child, the surviving partner gets 1/3 of the remaining estate.
- c. If a person dies with a spouse and an interdependent partner, the one who lived with the deceased at the time of death receives the entire estate. If neither were living with the deceased, the one who last lived with them takes the entire estate and other dependants, if any.

### **7. *Workers Compensation Act***

If a worker dies as a result of an accident and leaves a dependant adult interdependent partner, that partner can receive the same benefits that a spouse would receive--- an amount equal to what the worker would have received had the worker lived and been permanently totally disabled.

In a situation where an adult interdependent partner is not being supported and cannot take care of themselves, or if there is a Court order against the worker for support of the adult interdependent partner, the Workers Compensation Board can pay the compensation owing to the worker to the adult interdependent partner instead.

### **8. *Employment Pension Plans Act***

Because pension plans must be able to be registered under the *Canadian Income Tax Act*, the definition of 'partner' for the purpose of the *Employment Pension Plans Act* is not the same as an adult interdependent partner. Benefits are available to common-law partners, which, in this act, are defined as a person who lives in a conjugal relationship with the taxpayer and either:

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has lived with the taxpayer for a continuous period of at least one year; or is the natural or adoptive parent of a child of the taxpayer.

### **COMMON-LAW PROPERTY IN FEDERAL LEGISLATION**

#### **1. *Employment Insurance Act***

Employment Insurance rules treat common-law partners like married spouses if:

- a. They have lived together for at least 12 months, or;
- b. They had or are expecting a child together.

#### **2. *Canada Pension Plan***

“Common-law partners” are defined for the purposes of the Canada Pension Plan as two people, regardless of sex, who have lived together, in a conjugal relationship for at least one year. Under this definition, adult interdependent partners who are related by blood would not be included.

Pension benefits under Canada’s Old Age Security program are paid to Canadian residents over the age of 65. A Spouse’s Allowance is also paid to the partners of pensioners for partners between the ages of 60 and 65. Common-law partners can qualify for the Spouse’s Allowance if they have been living in the common-law relationship for at least one year.

Common-law partners have the same right to benefits from a Canada Pension Plan survivor’s pension, as long as they were partners at the time of the contributor’s death.

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### **REFERRAL NUMBERS**

Student Legal Services of Edmonton . . . . . (780) 492-2226  
Civil/Family Project . . . . . (780) 492-8244  
[www.slsedmonton.com](http://www.slsedmonton.com)

Lawyer Referral Services . . . . . 1-800-661-1095 (toll free)

Legal Aid . . . . . (780) 427-7575  
#300, 10320 102 Avenue  
[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

Family Law Information Centre . . . . . (780) 415-0404  
<http://www.albertacourts.ab.ca/familylaw/>

Workers Compensation Board . . . . . (780) 498-3999 (Edmonton)  
. . . . . 1-866-922-9221 (toll free in Alberta)  
<http://www.wcb.ab.ca>

Employment Insurance . . . . . 1-800-206-7218 (toll free)  
<http://www.servicecanada.gc.ca/eng/ei/menu/eihome.shtml>

Canada Pension Plan . . . . . 1-800- 277-9914 (toll free)  
<http://www.servicecanada.gc.ca/eng/isp/cpp/cpptoc.shtml>

Alberta Right Line . . . . . 310-0000  
Access any Alberta government agency toll free within Alberta

Government of Canada Information . . . . . 1-800-O-CANADA