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A GUIDE TO THE LAW IN ALBERTA REGARDING

COMMON-LAW PROPERTY

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GENERAL

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INTRODUCTION

Many couples choose to live together without getting married. This type of relationship is often called a common-law relationship or an adult interdependent relationship. If you are living in a common-law relationship, it is important you know that no matter how long you live together, the relationship with your partner NEVER becomes a marriage. Many people think that there is a certain time period after which you are considered married, but this is not true.

Because you are not married, you do not have the same obligations as a married person. Also, you do not have the same rights as a married person. This pamphlet will give you information on which rights and obligations you have, which ones you do not have, and what you can do to protect your interests.

PROPERTY RIGHTS

If your common-law relationship ends, one problem you may face is how to divide the property. There are two forms of property that need to be divided: personal property (such as furniture, cars or money) and real property (such as a house or land).

1. General

Although there are exceptions, the general rule is that property belongs to the person who paid for it and who has registered it in his/her name. Thus, any property that you bought before or during the common-law relationship belongs to you and only to you. You do not have an automatic legal right to property bought by your partner simply because you have lived together for a period of time.

As the only owner, you have the right to have and use the property as you see fit. For example, if the house was paid for by you and the title is in your name, you can exclude your partner

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from the house (make them move out or deny them entry) or sell it without consent. However, if your partner has contributed to the household directly or indirectly, then he/she may have rights to the house under a constructive trust. If a constructive trust may apply to your situation, you should contact a lawyer. An direct contribution would include, but is not limited to, paying for the mortgage, utilities or renovations. An example of indirect contribution would include, but is not limited to, child care, maintaining the household or decorating the household.

2. Joint Property

If you both bought the property together and the title is in both your names, then both of you are the legal owners. As a joint owner you do NOT have the right to stop your partner from using or possessing the property. Also, you cannot sell the property without getting the consent of the co-owner (your partner).

When dividing jointly owned property, you have two options:

- a. You can each agree to sell the property and split the money, OR
- b. You can each agree to take a portion, usually one half of the jointly owned property.

For example, if you and your partner jointly owned a stereo and a television that were of equal value, you would have two options. You and your partner can sell the stereo and television and split the money. You and your partner can also agree that you will take the stereo while your partner takes the television.

If you and your partner cannot reach an agreement, you should contact a lawyer.

3. Other Property

If the property is registered in both your names but only one of you paid for the property, the property may be presumed to be owned jointly. If you have paid for it by yourself, you may need to

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apply to the Court for assistance. The other person may be entitled to a portion of the property if it can be established that you both intended to share the property. If this type of property is in dispute, you should contact a lawyer. For further information on this topic, please refer to the section on Trusts below.

If you paid for the property yourself but it is registered in your partner's name, you will usually be entitled to the property. This is true unless your partner can prove that the property was a gift from you. Gifts are explained in the next section. Again, if property is in dispute, you should contact a lawyer.

4. Gifts

Gifts are an exception to the general rule that property belongs to whoever paid for it. Even though your partner paid the full purchase price of the property, you will get the property if you can clearly show that it was a gift from your partner.

If the matter goes to court, the burden of proof will be on you. This means that because you are claiming the property was a gift from your partner, you will have to prove to the Court that the property was a gift. In order to prove that the property was a gift, you must be able to clearly show that your partner intended to make a gift to you, that your partner delivered the gift to you and that you accepted the gift from your partner.

5. Trusts

In certain situations, you may be able to get a share of the goods that were purchased by your common-law partner. For example, if both of you clearly intended to share the property equally, but jointly decided only your partner would put his/her name on the title or pay the purchase price, you may be entitled to half the value of that property. This is called a **resulting trust**. In cases like this, it is very important to contact a lawyer because the issues involved are often complicated.

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A second type of trust is called a **constructive trust**. This may occur when one person unfairly benefits or profits from the acts of another. There may not have been any intention to share the property but, because of the circumstances, it would be very unfair for only one of you to keep the full value and benefits of the property.

Here is an example of a constructive trust, which is based on an actual case:

For 19 years a woman worked very hard at her common-law partner's beehive operation, without ever getting paid. Because of her time, money and hard work his business was a success. When they separated, he claimed ownership of the beehive operation. The Supreme Court of Canada said that this would be an "unjust enrichment" for her common-law partner because the business was making money largely because of the woman's work. The Supreme Court of Canada said that the woman was entitled to a share of the ownership of the beehive operation.

To win in a constructive trust action, you must prove that:

- a. one person got a benefit unfairly or unjustly AND;
- b. the other person was deprived of that benefit in some way AND;
- c. there was no legal reason that would justify the first person getting the benefit (like a contract).

When a Court is deciding if someone got a benefit unfairly and how the property should be divided between two people in a constructive trust action, it will look at some of the following:

- the length of the relationship and how much like a marriage it is, or if the relationship is one of interdependence pursuant to the *Adult Interdependent Relationship Act*;

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- type of contributions made during the relationship in money or in labour;
- whether or not the contributions gave the other person a benefit.

As a general rule, the common-law relationship must last a number of years before a constructive trust action will be successful. Trusts can often overtake a general rule regarding such things as ownership and gifts, so for any type of trust action, it is very important that you contact a lawyer.

OTHER BENEFITS AND STATUTES

1. *Adult Interdependent Relationship Act*

This Act applies equally to both same-sex and opposite sex couples. Any two people can enter into an adult interdependent relationship, including couples, parent-child, siblings, grandparent-grandchild, friends, etc.

A person is an adult interdependent partner of another person if the person has lived with the other person in a **relationship of interdependence**. A relationship of interdependence is one in which the two people share each other's lives, are emotionally committed to one another, and function as an economic and domestic unit. Furthermore, to enter into an adult interdependent relationship the couple must have lived in a relationship of interdependence for either a period of three years (or a relationship of some permanence if there is a child of the relationship) OR the couple must have entered into an adult interdependent agreement.

An **adult interdependent agreement** is created by a contract between the parties. Such an agreement will be invalid if it was induced through fraud or duress, if one of the parties is currently married or is already a party to another such agreement, or if one of the parties is under 16 years old. If one of the parties is 16-18

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years old, they require the prior written consent of their guardian(s) before they can enter into such an agreement.

A relationship of interdependence may exist between two persons related by blood only if neither person is a minor (under 18 years old). However, if a minor is not related to their partner, then a minor may be in relationship of interdependence so long as they are at least 16 years of age and they have the prior written consent of their guardian(s).

A relationship of interdependence does not exist where one partner provides services to the other for a fee, such as master/servant relationship. For example, a relationship of adult interdependence does not arise when there is a live-in caregiver.

It is important to note that a person cannot have more than one adult interdependent partner at any one time. Also, a married person cannot be an adult interdependent partner when he/she is still living with his/her spouse.

Please be aware that there are serious consequences for alleging that you are in an adult interdependent relationship that is not actually one pursuant to this Act. You can be liable for any damages and costs that were incurred by a third party as a result of your allegation of a false adult interdependent relationship. The person claiming to be in an adult interdependent relationship will have the burden of proving to the Court that the relationship exists.

An adult interdependent relationship ends when ONE of the following happens:

- a. The partners sign a written agreement which says that they agree to live separate and apart with no possibility that the relationship will continue, **OR**;

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- b. The partners live separate and apart for one year and one or both of the partners does not intend that the relationship will continue, **OR**;
- c. One or both of the partners gets married, **OR**;
- d. One or both of the partners enter into an adult interdependent agreement with someone else.

This Act changes a number of other laws, such as the Acts described below, so that these other laws now recognize adult interdependent relationships. This means that adult interdependent partners often get the same treatment as married couples. However, this act does not affect the division of property when partners separate.

2. Family Law Act

Under this Act, an adult interdependent partner can apply to the Court for support payments from their former partner. To apply to the Court for a support order, the adult interdependent relationship must have ended, the partners must be living separate and apart, and there must be no possibility that the relationship will continue.

The Court can order that the former partner must pay either periodic or lump sum support payments in an amount that is reasonable for the support of the other partner. In addition, the Court can designate possession of the matrimonial home to one of the partners. In deciding what amount is reasonable, the Court will consider the circumstances of each partner, including the length of the adult interdependent relationship and the functions performed by each partner during the relationship. If you are seeking support payments or possession of the matrimonial home under this Act, you should contact a lawyer.

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3. *Employment Pension Plans Act*

Pre-retirement death benefits are now payable to the adult interdependent partner of the deceased pension member in the same way they are paid to a legally married spouse.

4. *Dependants Relief Act*

Under this Act, adult interdependent partners are now considered dependants. This gives them the same rights that married partners have to appeal for relief upon the death of their partner. This Act applies when a person dies, with or without a will, and fails to make adequate provisions for the maintenance and support of his/her dependants. This Act allows the Court to 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 maintenance and support.

5. *Fatal Accidents Act*

Adult interdependent partners are now able to make applications under this Act for damages resulting from the death of their partner.

6. *Insurance Act*

In this Act, adult interdependent partners are regarded as "relatives" and therefore have the same rights as other people related by blood, marriage or adoption. In sections which speak more specifically about "spouses", adult interdependent partners now have the same rights, responsibilities and coverage as legally married spouses.

7. *Intestate Succession Act*

This Act applies to divide up an estate when a person dies intestate. A person is said to die intestate when he/she dies with no will.

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In Alberta, an intestate's estate is distributed as follows:

If the deceased had a surviving adult interdependent partner but NO children, the entire estate goes to the surviving partner.

- a. If the deceased had a surviving adult interdependent partner AND surviving children:
 - i. If the total estate is worth less than \$40,000, then the surviving partner gets the entire estate.
 - ii. If the total estate is worth more than \$40,000, then the surviving partner gets the first \$40,000 and the rest of the estate is split in equal shares between the surviving partner and children.
- b. If the deceased had both a surviving adult interdependent partner and a surviving married spouse:
 - i. The partner/spouse who was living with the deceased at the time of death will get the entire estate and the other partner/spouse does not get any of the estate.
 - ii. If neither partner/spouse was living with the deceased at the time of death, then the last person who lived with the deceased gets the entire estate and the other partner/spouse does not get any of the estate.

8. *Wills Act*

In general, a person's will is no longer valid once that person enters into an adult interdependent agreement.

9. *Workers' Compensation Act*

If a worker dies as a result of a work-related accident and the deceased worker had a surviving adult interdependent partner, the partner is entitled to the same benefits as a legally married spouse. If the deceased worker had both a surviving spouse and a surviving adult interdependent partner, then whoever was dependent upon the worker at the time of his/her death is entitled to the benefits under this Act. The benefits available under this Act include the pension in the amount the deceased worker would have received had he/she lived and been permanently and totally disabled.

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FEDERAL ACTS

The following Acts are Federal and are NOT changed by the *Adult Interdependent Relationships Act*.

1. **Employment Insurance Act**

An unemployed worker can claim his/her common-law partner as a dependent spouse if the relationship has lasted for at least three years. Extra unemployment benefits may be payable if the unemployed worker has other dependents, such as children.

2. **Canada Pension Plan**

If your common-law partner dies, you may have the right to their pension benefits if:

EITHER:

- you were living together for at least 3 years, AND
- you could not marry because one of the two of you was already married, AND
- you acted as if you were married in public.

OR

- neither of you were legally married at the time, AND
- you were living together for at least 1 year, AND
- you acted as if you were married in public.

In both of these situations, the common-law partner may be considered to be a surviving spouse and have a right to the same benefits as a legally married spouse.

You should contact a lawyer in the event you are dividing property pursuant to a common-law or interdependent adult relationship. If you feel that you may have a right to benefits under this Act or any of the other Acts listed in this pamphlet, you should contact the appropriate government agency. Student Legal Services can help you figure out who you should call and give you the appropriate referral number.

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REFERRAL NUMBERS

Student Legal Services of Edmonton 492-2226
Civil/Family Project 492-8244
www.slsedmonton.com

Lawyer Referral Services 1-800-661-1095 (toll free)
www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm

Legal Aid 427-7575
#300, 10320 - 102 Avenue
www.legalaid.ab.ca

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

Workers' Compensation 1-800-922-9221 (toll free)
<http://www.wcb.ab.ca/home/>

Employment Insurance 1-800-206-7218 (toll free)
<http://www1.servicecanada.gc.ca/en/ei/menu/eihome.shtml>

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

Alberta Right Line 310-0000
Access any Alberta Government Office by telephone toll-free within the province.

Government of Canada Information 1-800-O-CANADA
Access any Canadian Government Agency by telephone toll-free within the country.