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COHABITATION AGREEMENTS

In my practice I deal with many couples who have chosen to live together without being married. Many people believe that if they have lived together long enough the law will consider their relationship to be a “common-law marriage” and they will have the same rights and responsibilities as a married couple.

When I first started to practice law the answer was simple. If you were not married then, in the eyes of the law, you were just good friends and the only special rights and responsibilities between you related to the care and support of your children.

The laws in this area have changed dramatically in the past 30 years. Alberta now recognizes common-law relationships as “adult interdependent partnerships”. Similarly, the federal government recognizes common-law relationships under federal legislation including Canada Pension, Canada Customs and Revenue and Employment Insurance legislation. Most insurers (including health insurers, life insurers, automobile insurers) also recognize common-law relationships. Common-law partners now have many of the rights and obligations that married persons enjoy. The rights and obligations are still not identical to those of married persons. Some of the rights and obligations that arise upon entering an adult interdependent partnership relationship (common law spouse relationship) includes:

1. Distribution of property on death:
 - a. Part 3 of the Wills and Succession Act provides that where a person dies without a Will, their surviving adult interdependent partner is entitled to a preferred share of their estate;
 - b. Part 5 of the Wills and Succession Act provides that where a person dies without leaving adequate provision for the proper maintenance and support of their adult interdependent partner, (or dependent children or grandchildren), then a Court may, upon application by such person, order such provision as the Court considers adequate, be made out of the Estate;

- c. The Dower Act of Alberta provides that where a person owns residential property in the Province of Alberta, his or her married spouse has a Dower interest in that property. Provincial legislation does not apply to adult interdependent partners.
- 2. Support:
 - a. An Adult Interdependent partner may bring an application, under the Family Law Act of Alberta, for spousal or child support on the termination of that partnership.
- 3. Division of property on separation:
 - a. Although the terms of the Matrimonial Property Act of Alberta do not apply to the distribution of property upon the break up of an adult interdependent partnership, the partners in such a partnership may make an application for a share in the other partners property on the basis that partner has been “unjustly enriched” by contributions that he or she made during the relationship.
- 4. Canada Pension and Employment Pension Plans recognized Common Law (AIP) relationships:
 - a. When choosing your pension options, your adult interdependent partner must be involved.

There are, however, still areas in which the law recognizes a difference between married spouses and common law partners. There areas include:

- a) The Divorce Act of Canada provides that parties to a marriage, on divorce, may claim an order for spousal support or child support from their former partner. The break-up of a common-law relationship is not covered by the Divorce Act, however, adult interdependent partners may bring an application under the Family Law Act of Alberta for child or spousal support on the termination of an adult interdependent partnership;
- b) The Matrimonial Property Act of Alberta provides that where a married couple separates or divorces, each party is presumed to be entitled to 50% of the matrimonial assets. Although there are exemptions under this legislation for property brought into the marriage and inheritances, these exemptions are not automatic. They must be claimed and proven at the time of separation or divorce. The Matrimonial Property Act does not apply to adult interdependent partners. On the termination of an adult interdependent partnership, a partner must prove that the other partner has been “unjustly enriched” by contributions that he/she made during the relationship in order to claim any interest in property that was not jointly held;

- c) The Dower Act of Alberta provides that where a person owns residential property within the Province of Alberta, his or her spouse has a “dower interest” in that property. The property cannot be sold or mortgaged with the prior consent of the spouse and, further, upon the owner’s death his or her spouse is entitled to remain in possession of that property for the rest of their life regardless of the directions in the owner’s Will. This legislation does not apply to adult interdependent partners;

This is a rapidly changing area of the law. Very often, persons involved in a common-law (or adult interdependent partnership) relationship do not know what rights and obligations are imposed upon them as a result of the relationship. Furthermore, those rights and obligations may change over time as the law evolves. Finally, in many cases, people do not know whether, or not, they have “crossed the line” and entered into a common-law relationship. If a couple does not want all of the rights and obligations that are imposed upon them, or may be imposed upon them, by operation of law in future then they must specifically contract out of them.

It is extremely important, therefore, that couples consider the rights and obligations they wish to have between themselves and document what they want in a formal Cohabitation Agreement.

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