

Helpful Legal Information for MAHCP Members

Common-Law Partners Beware June 30, 2004

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Unmarried couples living together got a wake-up call on the morning of June 30th, 2004. They had the decision to marry largely taken out of their hands. The Government of Manitoba passed legislation that gives common-law partners the same property rights as married couples. This applies to both same-sex and opposite-sex partners.

There are 3 ways of qualifying a common-law relationship under the new Act. One way is to live in a conjugal relationship for a period of at least three years. A second way is to live in a conjugal relationship for one year and be the parents of a child together. A third way is to register as common-law partners under the Vital Statistics Act.

Before the coming into force of this Act there were a number statutory rights that affected married couples. Married couples have rights on dissolution and death under the terms of The Family Property Act, The Homesteads Act and The Intestate Succession Act among others. Before the coming of these changes, when looking at purely property issues one could largely ignore the rights and obligations to a common-law spouse because there simply weren't many. That approach has taken a 180 degree turn as of June 30, 2004. The law now treats qualifying common-law relationships with all the rights that were previously reserved for married couples.

One of the issues of particular note with the coming of the changes is their impact on a common-law partner's will. When the common-law couple breaks up or ceases to qualify as a common-law couple according to the provisions of the Act, certain aspects of their wills are altered just as when a couple used to divorce. The break up of the common-law relationship causes the revocation of a gift to the partner, the revocation of an appointment as executor or trustee or the revocation of a power of appointment in favour of the partner. This can result in the unintended failure of a gift to the common-law partner.

Changes to The Family Property Act mean that surviving common-law partners are entitled to make applications against the estate for an accounting and equalisation of common-law property. Many common-law partners have made their estate plans on the expectation that their partner has no legal claim to accounting and equalization. That strategy is undermined by the Act.

Some people consciously choose not to prepare a Will. They rely on the terms of The Intestate Succession Act which previously did not provide a benefit for common-law partners. The new provisions may frustrate these intentions. The changes to The Intestate Succession Act provide that where a person dies without a will, the qualifying common-law spouse stands first in line to receive the deceased's estate.

Changes to The Homestead Act also affect the property rights of the common-law partners. Qualifying common law partners now may have the right to a life estate in the family home. This is further complicated by a first come, first served prioritization where there are more than one qualifying surviving spouse.

The Powers of Attorney for common-law partners have to be signed in compliance with new provisions of the legislation. Formerly, this was necessary only



for married persons. Powers of Attorney that don't meet the new requirements are now ineffective in dealing with real property rights of common-law partners.

People who think they qualify as common-law partners should fully inform themselves of the impact the Act has had on altering their legal rights and responsibilities. They want to talk to a lawyer who can explain the new rights and how it applies to them. They may also want to look to cohabitation agreements to determine their rights. Not fully understanding and therefore not dealing with the issues could lead to much more serious commitments than common-law partners intend.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This is one of a series of articles that will be appearing in future editions of the MAHCP News.