

Legal Status Changes Ahead for Unmarried Couples

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At the end of 2018, the Alberta government passed the Family Statutes Amendment Act. Among the notable changes brought in with the Act were new rules that will affect unmarried couples who live together. The Act specifies when unmarried couples will be deemed to be in a 'common law' relationship and how the couples' assets will be divided should the relationship end. The changes, which impact the 1 in 6 couples in Alberta that are co-habiting¹, come into effect on January 1, 2020.

Prior to the passing of the Act, splitting unmarried couples had no clear right to have assets acquired during the relationship divided equally. That all changes next January when common law couples will be entitled to the same 50/50 split of assets as married couples. Some assets are exempt from the 50/50 split including the value of assets inherited by or gifted to one party, funds received as the result of a personal injury to one party or the value of assets brought into the relationship by one party, valued at the date of receipt or the effective date of the cohabitation, whichever is later. Increases in value to those assets are not necessarily exempt.

To be considered a common law couple, or to be in an 'Adult Interdependent Relationship' as it is officially known, the parties must have lived together for three or more years, or a shorter period of time if there is a child arising from the relationship, or if they have signed an agreement confirming they are 'Adult Interdependent Partners' at any point. To be considered an 'interdependent' couple, the courts generally expect that the couple live together, that they hold themselves out to the community as a couple and have intertwined their financial and emotional lives. Once a couple is considered to be Adult Interdependent Partners, their property entitlements do not start at that date, but go back to the date they started to live together.

Like married couples, people in a cohabiting or common law relationship can choose to enter in to a cohabitation contract. Cohabitation contracts are used as an agreement on how property will be divided if the relationship ends and, sometimes, if either party will be entitled to any support. These agreements are most often used if one or both of the parties are entering the relationship with accumulated assets such as real estate, shares or ownership of a business, investments, pensions or an inheritance. They are especially useful for anyone that is part of a family business.

To be enforceable, the parties have to exchange full disclosure of their assets and liabilities and each must have independent legal advice from their own lawyer, who is able to explain what the law would otherwise be and how the terms of the contract change the entitlements of their client.

Taking the proactive steps to sign a cohabitation agreement when the relationship is strong can help couples avoid considerable time, stress and money if the relationship breaks down. Simple steps such as agreeing when the couple officially started living together can avoid significant conflict years later. A full financial disclosure at the time of signing the agreement will also help avoid disputes about the value of assets at the start of the relationship.

¹ <https://www.theglobeandmail.com/news/national/census-2016-statscan/article35861448/>

If you are in a cohabitation relationship that has lasted three years or more on January 1, 2020, then you will automatically be deemed to be in a common law relationship. If you do not have a cohabitation agreement in place at that time, you and/or your partner will immediately be entitled to a fair, 50/50 division of assets, subject to exemptions. If you wish to have different property entitlements than the legislation seeks to impose, there is still time to create a cohabitation agreement before the law comes in to effect. But remember, both parties must have legal representation to create a valid agreement.