

PUBLICATION

The Rights of "Common Law" Partnerships Change in Alberta

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March 24, 2020

As of January 1, 2020 under the new *Family Property Act* of Alberta, common law partners who separate in Alberta are now granted the same legislated rights as married people who divorce.

This change of legislation is profound. Alberta now recognizes that people in common law relationships are entitled to the same protection and processes afforded to married couples. This new law is reflective of how we recognise the changing social relationship between partners and acknowledges that partners need to be protected whether there was a formal marriage or not.

It used to be that only married couples had legislation that assisted them with the division of matrimonial property upon separation. Traditionally common law partners had no legislated rights and their individual interests in assets enjoyed during their partnership was dubious and less certain.

Common law relationships which fall within the new *Family Property Act* must meet one of three factors:

1. they are considered common law when a child is born as between them
2. they agree to establish their relationship through the use of a contract
3. after the parties have been in a relationship of interdependence for three years

Alberta no longer refers to the relationship as "common law" any longer, but now uses the term "Adult Interdependent Partners" or AIPs. Non-married couples are considered AIPs if they live together in a relationship of interdependence for a period of at least three years, sharing one another's lives, are emotionally committed to each other, and function as a domestic and economic unit, though additional factors may be relevant. Interestingly, an AIP may be established even in the event the couple has lived together for less than three years, if the couple has a child together or if the couple has entered into a written contract known as an "Adult Interdependent Partner" agreement. There are certain restrictions, so it is always best to contact a Family Law lawyer to ensure you understand the type of relationship you and your children may be in.

If you are considering separating, keep in mind the timing of your relationship as an AIP relationship can flow into a married relationship. AIP relationships are difficult to assess when one partner dies. It's imperative to understand if you or your children fall within the definition of an AIP relationship as your personal planning may be affected.

When a relationship breaks down the division of assets are usually highly contested. The new *Family Property Act* sets out which assets are to be included and which can be excluded. Determination is often fraught with problems as both parties want to maximize their share.

Knowledge is key. Be thoughtful about how you gift to your adult children such as gifting money towards the purchase of a home. Parents who wish to loan or make a gift to their child who may be in an Adult Interdependent Partnership should carefully consider the best approach to ensure that the gift or loan does not get caught up in the division of assets upon separation.

Consider how best to document the loan or gift to your child and whether the use of a registered loan agreement on title will be of assistance.

From co-habitation agreements to loan agreements, documenting gift while alive or in your will, each scenario needs to consider the implications of the new *Family Property Act*.

If you or your child are in an Adult Interdependent Partnership relationship and you wish to document your intentions, please reach out to one of our [Family Law](#) or [Wills, Trusts & Estates](#) lawyers for assistance - we're here to help.
