

**INHERITANCE RIGHTS FOR
COUPLES LIVING SEPARATE AND APART**

In my practice, I often come across couples who are living together but not married (or, still married, but living separate and apart). There are some inheritance issues that specifically affect the couple. For instance, for couples who die after February 2, 2012:

1. Part 3 of the Wills and Succession Act of Alberta provides that where a person dies without a Will, their surviving spouse is entitled to:
 - a) 100% of the residue of the estate if the deceased had no children or all of the deceased's children are also children of the surviving spouse;
 - b) Otherwise, the estate will be distributed between the deceased's surviving spouse and his or her surviving children.
2. The Wills and Succession Act Part 5, provides that where a person dies without leaving adequate provision for the proper maintenance and support of that person's spouse, a Judge may, upon application by such person, order such provision as the Court considers adequate out of the estate of the deceased.
3. 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 their matrimonial assets (that is all assets acquired by the parties since their marriage). This right is triggered upon separation, divorce or death, and does not terminate until after the parties have been divorced (or dead) for two years.
4. 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 without 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 right does not terminate unless, or until, the parties divorce.
5. Employment pension plans and other benefit programs often provide priority rights to spouses. In choosing pension options, the spouse must be involved. Those rights do not terminate simply because the parties have separated.

It is extremely important, therefore, that separated couples consider the rights and obligations that continue to bind them and take steps to deal with those issues.

We recommend, therefore, that couples in either situation prepare and execute (with the benefit of legal counsel) a formal Separation Agreement to deal with the above described issues.

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