

How the New Family Property Act Can Impact Your Planning

On January 1, 2020 the Matrimonial Property Act in Alberta (the "Act") will be substantially changed by the Family Statutes Amendment Act (2018) (the "Amendments") and will be renamed the Family Property Act. These changes will give "Common Law Couples", known as Adult Interdependent Partnerships (AIP) under Alberta law, the same property rights upon breakdown of the relationship and separation as couples that are legally married.

WHO ARE COMMON LAW COUPLES/ADULT INTERDEPENDENT PARTNERS?

Generally, an AIP is defined as two people who:

- live together in a "relationship of interdependence" for at least three continuous years,

OR

- live together in a "relationship of interdependence" and have a child together (through birth or adoption),

OR

- have signed an adult interdependent partner agreement (a contract that complies with requirements in the Adult Interdependent Relationship Act).

A "relationship of interdependence" means a relationship where you share each other's lives, are emotionally committed to each other, and work together as an economic and domestic team.

WHAT'S CHANGING?

With the Amendments, people in an AIP will be entitled to the same presumptions of equal division of property that married spouses would have. The Amendments also change the timing of when the divisions begin. The equal division presumptions could start as early as when a couple started living together (in contrast to using the date of marriage). The Amendments are a fundamental shift in how common law/marital property rights will be treated in Alberta.

WHO DOES IT EFFECT?

Where couples are married or in an AIP before January 1, 2020, and the relationship breaks down, or the couple gets divorced, after January 1, 2020, then these new rules will apply.

Upon divorce the presumption that you have rights to equal division of property of the relationship will apply to property acquired after you started cohabitating with your partner, rather than only applying to property acquired after the date of marriage.

For couples who are recently married but lived together for a long time before marriage, this could mean a very big shift, as potentially it means that all pre-marital property acquired during the cohabitation will be subject to the same presumptions of equal division, whether that was intended or not.

HOW CAN THESE CHANGES IMPACT AN ESTATE?

While people in an AIP are already entitled to make claims for support under the Wills and Succession Act (Alberta), these new presumptions and entitlements to the property of the relationship, whether married or not, may impact the assets of the estate. In particular they may have unexpected results for relationships developing later in life.

DO THE AMENDMENTS IMPACT SPOUSAL SUPPORT?

No. Partner support and spousal support obligations/rights are not affected by these Amendments.

DO THE AMENDMENTS IMPACT CHILD SUPPORT?

Yes. Before these Amendments, the rights of adult children with disabilities for child support was different for divorced parents than for parents who weren't married. Now the rights will be the same where a divorce or terminated AIP occurs.

HOW CAN I PREPARE FOR THESE CHANGES?

A properly drafted cohabitation agreement, pre-nuptial agreement, or post-nuptial agreement can provide predictability and comfort for any couple in a relationship of interdependence, whether married or not. If you do not have an agreement in place governing what is to happen with your personal and financial assets on relationship breakdown or death, you will be subject to these changes which may have a large financial impact on you or your family.



Have you been named as an executor or a personal representative in a will?

Stay tuned for ESTATE ADMINISTRATION WEEK in Spring 2020 – check our website for more details www.ecfoundation.org

WILLS WEEK 2019

Edmonton Community Foundation is pleased to present free public seminars that provide professional information on wills and estates. Please join us at one of the sessions listed below.

Mon, Oct. 7 9:30 - 11:30 a.m. Northgate Lions Senior Rec. Centre 7524 139 Avenue N.W.	Tues, Oct. 8 6:30 - 8:30 p.m. Millennium Place 2000 Premier Way, Sherwood Park	Thur, Oct. 10 6:30 - 8:30 p.m. Northgate Lions Senior Rec. Centre 7524 139 Avenue N.W.
Mon, Oct. 7 6:30 - 8:30 p.m. South East Edmonton Seniors Assoc. Activity Centre 9350 82 Street N.W.	Wed, Oct. 9 6:30 - 8:30 p.m. Mill Woods Seniors & Multi-Cultural Centre, Rm 231, 2610 Hewes Way N.W.	Fri, Oct. 11 9:30 - 11:30 a.m. Central Lions Seniors Association 11113 113 Street N.W.
Mon, Oct. 7 6:30 - 8:30 p.m. The Red Willow, St. Albert Seniors Association 7 Tache Street	Wed, Oct. 9 2:00 - 4:00 p.m. Terwillegar Rec Centre Rm 6, 2051 Leger Road N.W.	Fri, Oct. 11 6:30 - 8:30 p.m. Telus World of Science, 2nd Floor, 11211 142 Street N.W.
Tues, Oct. 8 6:30 - 8:30 p.m. Hilton Garden Inn 17610 Stony Plain Road N.W.	Thur, Oct. 10 6:30 - 8:30 p.m. McConchie Gardens 6503 170 Avenue N.W.	Seminars are FREE, but seating is limited. First come, first served. Information may change, confirm at: ecfoundation.org



YES.

The combined federal and provincial tax charitable donation credit in Alberta not only applies to gifts made during lifetime, but also to gifts in wills, life insurance, and registered accounts.

At 50 per cent, **yes 50 per cent**, it is easy to calculate that a charitable gift in Alberta can cost an individual donor only half of the gift amount, once the tax savings are considered.

And yes there are some (generous) limits and even special additional tax incentives for some types of gifts and/or certain individuals, but this “50-per-cent-off-sale” has made it possible for people who would describe themselves as “ordinary” to make extraordinary gifts that make a difference.

The tax incentives allow the donor to:

- have the power to choose who benefits from more of their estates.
- help causes and organizations important to them.

Edmonton Community Foundation has the honour of helping people talk through and plan what they wish to enhance in our communities near and far. From gifts supporting the arts; to assisting people living in some form of difficult circumstance such as illness, poverty, homelessness; supporting education; protecting the environment; investing in social enterprises; encouraging activity, recreation and leisure; or any combination, these plans are as unique the donors themselves.

Whether you already have ideas or are looking for ideas, our resources and expertise will help tailor your gift to achieve your particular goals. If you would like a copy of our ideas list (just a starting point) or information package, please e-mail us at info@ecfoundation.org.

New message

To **Dear Millennial**
Subject **Why you need a will**

Message

I know what you’re thinking; you’re young, hip, and you’re going to live forever. You’re also probably thinking that you have nothing, so why would you need a will? Well, I have some news for you. Like avocados going on sale, the unexpected does happen. Although I have never witnessed a sale on avocados, I have heard second-hand stories of it occurring. As a side note, as a millennial myself, I really love a good avocado toast and if someone can tell me when avocados are on sale, I would greatly appreciate it. Getting back on track, why do you, a millennial, need a will? Well, I have four reasons for you and I know you’ll appreciate this easily digestible list.

1. Digital Life

We are the social media generation. We all have various accounts and pride ourselves on our public image. We control how we are perceived through the use of our favorite social media applications. We do this by only posting the cutest and most flattering selfies. If you perish without a will, you’ll have no control over what’s done with your digital accounts. A will helps you control your digital footprint.

2. Pets

What will happen to your beloved pets when you pass away? It’s troubling to think that your furbaby might not end up in the ideal home with an adequate guardian if something were to happen to you. With a valid will you can designate an appropriate guardian and ensure that your beloved animals are well cared for.

3. Taxes

No, you can’t escape taxes by dying. But as you prepare your terrific will, you can plan to minimize taxes and even estate costs by making sure you work with a knowledgeable advisor.

4. Advocate ‘O’s

With a will, you designate someone you trust to follow your wishes and distribute your estate. You can also make sure your cherished possessions find a worthy home.

Yes, the unexpected can happen. Death doesn’t discriminate based on age. It is best to take life into your own hands now and do your estate planning. So, avoca-do look into getting a will and avoca-don’t get left behind.



Avoiding Probate

In some provinces other than Alberta, probate fees are high enough to be considered an additional tax on an estate. But in Alberta the largest probate fee that is charged (even on millions of dollars) is \$525. It is so low... that putting your children on your bank account or as an additional owner on the title of your home to “avoid probate” is an extreme reaction that can cause many other problems that are either impossible or very expensive to solve.

Probate is a process designed to protect your wishes when you cannot speak for yourself. Avoiding probate means surrendering this protection when you may need it most.

Probate begins when the person you have appointed to handle your estate (called “personal representative” or “executor”) provides a copy of your will and a list of your assets to the court clerks together with a series of forms that provide information about the deceased, the will, and the people named in the will.

In addition, the forms will show how the personal representative is planning to distribute the estate to those named people. The court can then check to be sure that the plan agrees with the will and the assets. Probate is required to transfer land and also is generally required by financial institutions (such as banks) so that everyone can be confident that they are transferring money and property properly.

Probate also helps protect personal representatives so that they can be confident that they are distributing the property in accordance with the correct will, that the will is valid, and that there are no other people with legal rights to override the will.

Professional advisors will help your personal representative through the many probate forms to fill and steps to follow. Their fees are separate and different from the court probate fees. Both probate and professional advisors have a great purpose – to protect your wishes.

APPOINTMENT POWER: *Powers of Attorney*



Have you considered who might act for you if you were unable to handle banking, legal, or other contractual matters? Who would deal with your phone bill, cancel various services, or give your lawyer or accountant instructions on your behalf?

Privacy: Today, privacy concerns are becoming an increasingly difficult issue to navigate with many service providers. Phone companies, banks, energy providers – to name a few – will resist or refuse dealing with anyone other than you unless you have legally appointed someone to act on your behalf.

Protect Yourself: Creating an Enduring Power of Attorney while you are of sound mind and body is an important way of protecting yourself and your loved ones against instability later on.

Who to Appoint: “Attorney” does not mean a lawyer. An attorney is a trusted friend, family member, or corporation (like a trust company) that you appoint to act on your behalf for financial and legal matters if you ever need their help while you are living.

Flexibility: The power is yours! You can appoint an attorney under a “general power of attorney” who can act for you for a limited period of time, perhaps while you’re on

an extended vacation, during a temporary hospital visit, or while an injury keeps you housebound for a short while. Or you can appoint one under an enduring power of attorney to act if you become more seriously disabled. You can appoint this attorney to act immediately for you or create a “springing” authority that doesn’t come into force until your doctor (or someone else you choose to appoint) agrees you need this assistance.

Consistency: It’s important to be careful about who you are appointing as your attorney and what powers you are giving them. Be cautious about bank tellers or other service providers who ask you to sign their form of powers of attorney on the spot. Those documents may cause lots of problems for you and might give the wrong powers, and even cancel other documents you have carefully prepared. If you have already appointed an attorney, make sure you aren’t signing documents that will create confusion and/or cancel those wishes.



Want more information on wills and estates? Check out Episode 54 at [TheWellEndowedPodcast.com](https://www.thewellendowedpodcast.com)



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