

ESTATE MATTERS FOR COMMON-LAW COUPLES IN ONTARIO



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A common misconception surrounding estate issues is the belief that common-law couples have the same rights to inherit as couples who are legally married.

Common-law couples are those couples have been living together in a conjugal relationship but are not legally married. Many common-law couples are surprised to discover that they are not legally entitled to their common-law spouse's estate. This issue affects equally the heterosexual and homosexual couples. Homosexual couples in Ontario can legally marry.

The entitlements of common-law couples under the estate laws are often misconstrued.

The matter is even more confusing as in many other situations common-law couples are treated in the same manner as these, who are married. For example, common-law couples are generally treated in the same manner as married couples under the tax rules after one year of cohabitation.

In Ontario the law of intestacy (dying without a will), is governed by the *Succession Law Reform Act*. This legislation addresses the succession for legally married spouses only and does not provide rights to inherit in intestacy for common law spouses.

A surviving married spouse is entitled to what is known as a preferential share of their deceased spouse's estate if their spouse died intestate. This essentially entitles the surviving spouse to the first \$200,000 of the estate. Whatever remains is divided between the surviving spouse and children in a manner depending upon the number of children the deceased had. For estates worth \$200,000 or less, the legal spouse is entitled to the entire estate.

However, common-law couples are not covered by the provisions of the *Succession Law Reform Act*. When individuals, who are not legally married, die intestate, their estates are distributed to blood family members in an intricate line of succession. The surviving common law spouse is not entitled to the preferential share of the estate or a portion of the residue as the legally married spouse would be.

Common-law couples with children face additional complications. When a parent dies intestate leaving a minor child, the child (but not the other parent) becomes the beneficiary of the estate. While the surviving parent can hold the estate in trust for the minor child, this may involve often a lengthy and often expensive Court application. In the meantime, the surviving spouse can face financial hardship, further compounding an already stressful and emotional situation.

Common-law spouses may be entitled to some funds from the deceased estate by making a claim for support from the estate. However, such claim necessitates an application to the Court and can be complicated, costly, and emotionally draining. It also has to be noted that to make a claim against the estate, the cohabitation requirement for the claimant common-law spouse is three years (and not one year) unless the claimant is a parent of the deceased's child.

Common-law couples can protect themselves, their spouses, and their estates by preparing valid wills. Speaking with an experienced estates lawyer will provide common-law couples with the advice they require to ensure that their wishes are followed.

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