

Bill 53 - THE COMMON-LAW PARTNERS' PROPERTY  
AND RELATED AMENDMENTS ACT

**PRACTICE NOTES**

1. GENERAL

- Learn the terminology "common-law partnerships".
- Double-check the applicable legislation to see if your client qualifies.

Common-law partnerships which acquire that status through the passage of time have differing qualifying periods:

- three years - *Marital Property Act, The Homesteads Act, The Intestate Succession Act;*
- three years or one year if there is a child - *The Family Maintenance Act, The Dependence Relief Act, The Fatal Accidents Act, The Highway Traffic Act;*
- one year if neither party is married or three years if either party is married - *The four pension Acts;*
- one year - *The Human Tissue Act, The Victims Bill of Rights;*
- one year or less if there is a child - *The Anatomy Act;*
- six months - *The Mental Health Act, The Vulnerable Persons Living with a Disability Act.*

*The Farmlands Ownership Act* applies to registered common-law relationships only.

- Change all precedents to include the correct Acts.
- Recognize that only common-law partners who are cohabiting as at the date of proclamation will qualify – so your clients can avoid the application of the legislation if they separate now.
- Keep in mind the effective dates for different legislation.

2. MARITAL PROPERTY ACT (to be renamed the *Family Property Act*)
- Thousands of people will automatically have their rights and responsibilities re-written by the legislature upon proclamation.
  - Parties may contract out of the provisions of this *Act* before or during marriage or cohabitation ("pre-nuptial" "spousal" or "co-habitation" agreements).
  - Part IV of this *Act* gives the same rights to property sharing at death as are available at separation. Therefore agreements should deal with what happens at death as well as separation.
  - A ninety-day period of reconciliation can revive an earlier period of cohabitation and make the *Family Property Act* applicable. There seems to be no limit as to how long ago the previous co-habitation occurred. This is the exception to the general rule that parties separated at proclamation are not included.
  - Estate planning which short changes the common-law partner can be undone by a challenge under Part IV of the *Act*. All clients in common-law relationships should have their estate plans reviewed.
  - Careful attention to limitation dates is required. One party to a registered common-law partnership can initiate a dissolution which if unchallenged will be registered 30 days later, and 60 days after that the common-law partner loses their right to bring a marital property application. Non-registered partnerships lapse with time.
  - In estate administration the six month notice will have to be provided to common-law partners just as it is now required for spouses, within 30 days of the grant of probate. It is not clear how much investigation an executor will need to undertake to determine whether the deceased was in a common-law partnership at the time of their death or had been in such a partnership within three years of their death.

### 3. THE WILLS ACT

- Thousands of Manitoba Wills will be revoked once this legislation is proclaimed. All clients who are living common-law should have their wills reviewed.
- One of the exceptions to automatic revocation is if there is a declaration in the will that it is made in contemplation of the common-law relationship. Commencing immediately, this clause should be inserted into all Wills where applicable.
- It will be necessary to search Vital Statistics to determine if there are any subsisting or terminated common-law partnerships in order to determine the validity of a will or a specific bequest before administering an estate.
- The extent of a duty to investigate the existence of non-registered common-law partnerships is unclear.

### 4. THE INTESTATE SUCCESSION ACT

- A common-law partner can take priority over a spouse if theirs was the most recent relationship. Therefore a spouse can no longer simply wait for the death of testator secure in the knowledge that they will inherit unless they release their rights.
- Many Manitobans in common-law partnerships may not have prepared a will because they were satisfied that this *Act* would cause their estate to be dealt with in a satisfactory way. This may need to be revisited for some clients. (For example: the widowed pensioner with grown children who lives with a companion and who may now wish to make a will to ensure that her children inherit)
- Again it will be necessary to search for registered common-law partnerships and there may be an obligation to make inquiries regarding whether any non-registered common-law partnerships exist.

## 5. THE HOMESTEADS ACT

- On the date of proclamation this Act will give rise to hundreds of thousands of *Homestead Act* life estate and will in some cases deprive married spouses of homestead rights which they previously held.
- Much more careful examination will be needed as to whether there are homestead rights in a particular property and if so by whom they are held whether you are acting for a married spouse, former or existing common-law partner, mortgagee, or vendor.
- Section 2.2 is conjunctive. Therefore, is not enough for the previous homesteads rights to be released or terminated and ownership interests (if any) transferred. The previous spouse or common-law partner also has to have had their claim under the *Family Property Act* (if any) satisfied before the new spouse or common-law partner can acquire homestead rights in the property.
- Note that similar to the *Marital Property Act*, although the act only applies to persons who are married or co-habiting at the date that it is proclaimed, it is possible to revive a prior period of co-habitation with a 90 day reconciliation.
- In powers of attorney it will now be necessary to have not only married persons, but also persons in common-law partnerships execute a spousal acknowledgement for power of attorney in Form 9 to the Act. When former *Dower Act* was changed in 1993, there was a grandfather but there does not appear to be such a clause for this new legislation.
- When preparing powers of attorney's for clients in common-law partnerships, even prior to the proclamation of this legislation, spouses acknowledgment would be advisable.

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