

HOW SPOUSAL RIGHTS WORK IN ALBERTA



Find out how your client's estate is affected

Surviving partners and family members face grief and arduous estate administration when a family member dies. Asset distribution can trigger difficult questions, family tension and costly estate litigation, particularly where a surviving spouse's inheritance is inadequate or different than expected.

What are the rights of a surviving spouse to inherit? This article examines spousal rights in Alberta according to the province's various acts.

ADULT INTERDEPENDENT RELATIONSHIPS ACT

The Adult Interdependent Relationships Act (AIRA) defines adult independent partners (AIPs) and affords them similar support, property rights and responsibilities as married partners have. Regardless of gender, two people have AIP status if they live together for at least three years continuously and share in one another's lives, are emotionally committed to one another and function as an economic and domestic unit. Alternatively, a couple has AIP status if they live in a relationship of some permanence where there is also a child by birth or adoption, or they enter into a written Adult Interdependent Partner Agreement with each other.

One can simultaneously have both a married spouse and an AIP. For example, a married person may be living with another partner for three years or in some shorter relationship of permanence where there's a child.

The AIRA also contemplates the possibility for two people not romantically involved to be AIPs. Note however, that, adults related by blood or adoption must enter into an Adult Interdependent Partner Agreement to gain AIP status.

An AIP is considered a dependant under the Wills and Succession Act so may make claims for support or further property provision if they feel they have not been adequately provided for under the deceased's will or on intestacy.

WILLS AND SUCCESSION ACT

In 2012, Alberta passed the new Wills and Succession Act (WSA), consolidating five pieces of legislation. The new WSA covers wills, intestacy, beneficiary designations, survivorship and family support.

Under the act, marriage or entering into adult interdependent partnership no longer revokes a will. Upon divorce or one-year separation from an AIP, unless the will expresses contrary intention, the ex-spouse or AIP is deemed to have predeceased the testator for purposes of gifts or appointments under the will. What this means is that absent language in the will confirming the gift or appointment even if separated or divorced, then the ex-spouse or AIP no longer receives a gift under the deceased's will or is appointed as executor, guardian or trustee. Note this change does not extend to beneficiary designations on insurance policies or investments. If the deceased owner doesn't want an ex-spouse or AIP to receive RRSP or TFSA funds or insurance policy death benefits, the deceased owner must change beneficiary designations.

Also under the WSA, AIPs not on title to the deceased's home may remain in the home for 90 days, with the estate paying costs.

WSA AND INTESTACY

Under the WSA, AIPs have the same rights as married spouses on intestacy. Where there's a surviving spouse or AIP but no descendants, the entire estate goes to the surviving spouse or AIP. Where there are one or more descendants, when all children are also children of the sole surviving spouse or AIP, the entire estate goes to spouse or AIP. If any of the children are from another relationship involving the deceased, the spouse or AIP gets the greater of the preferential share (\$150,000) and 50% of the estate's net value. All children equally share the remainder.

Where the deceased leaves both a surviving spouse and AIP, the surviving spouse and AIP split the estate equally if there are no descendants. Where there are descendants, the split is the same as above.

Note that a spouse or AIP may be disinherited if separated from the deceased for at least two years, or if there is a court declaration of irreconcilability or order to permanently conclude marital affairs.

WSA AND FAMILY MAINTENANCE AND SUPPORT (“FMS”) CLAIMS

The WSA tempers testamentary freedom to some extent by requiring testators to provide adequate provision for their dependants. “Adequate provision” goes beyond financial need to contemplate the “moral expectations of contemporary society” in respect of the dependant. Therefore, FMS claims may reflect the lifestyle of the deceased and dependant up to the date of the deceased’s death. In addition to accustomed lifestyle, the court considers the following factors when determining the appropriate settlement for a dependant:

- size of testate estate;
- dependant’s age, health and ability to self-support, as well as future needs; and
- applicant’s character and conduct.

FAMILY PROPERTY ACT

On January 1, 2020, the Family Property Act (FPA) replaced Matrimonial Property Act. The FPA sets out rules for division of family property on relationship breakdown. The FPA extended property rights of married spouses under the former MPA to AIPs. In the case of AIPs, the FPA applies only where separation occurred after January 1, 2020.

A spouse or AIP make a claim under the FPA on death of their surviving spouse or AIP in cases where the parties were separated at the death of the other spouse or AIP. Note that family property includes all assets and liabilities owned or incurred during the relationship unless the property is exempt from division. Exempt property includes that acquired prior to the start of the relationship, property acquired by gift, inheritance or as proceeds of non-property insurance policies or damage settlements

DOWER ACT

The Dower Act applies in Alberta if the deceased spouse was the only spouse on title to the matrimonial homestead. A homestead is defined as “a parcel of land on which the dwelling house occupied by the owner is situated”. The Dower Act gives the surviving married spouse a life interest in that homestead. A dower life interest allows the surviving spouse to live in or rent the property but not sell it. The surviving spouse is responsible for the property’s maintenance and capital costs while they hold the dower life interest.



A dower life interest is an asset of the surviving spouse, not the estate. Dower rights override will provisions and WSA provisions on intestacy and may limit the court’s ability to recalculate property divisions for FMS claims. In the latter case, the spouse must agree to relinquish the dower life interest, wherein the courts typically award the spouse some form of compensation.

The dower life interest as an asset of the surviving spouse may be considered when calculating any award they may receive. The court considers the circumstances of the claimant spouse by estimating the value of the life interest, and may award additional amounts to ensure the spouse can carry property costs during their life. The Dower Act can also include a life estate in some personal property of the deceased’s, such as furniture, appliances, necessary tools, vehicles and equipment related to the practice of a trade.

The following Dower Act rules should be noted:

- Cohabiting, common-law couples and AIPs are excluded.
- When any two names are on title of the property, the Dower Act doesn’t apply.

- If only one spouse has resided on the property, dower may still apply for the non-title spouse.
- Spending even one night on the property during the marriage could trigger dower rights.
- Remarriage doesn't impact dower rights from a prior relationship

CONCLUDING REMARKS

When talking about the planning landscapes, boundaries, and opportunities that affect them, understanding spousal rights arms one with talking points to facilitate information-rich, valued added conversations for holistic planning.

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