

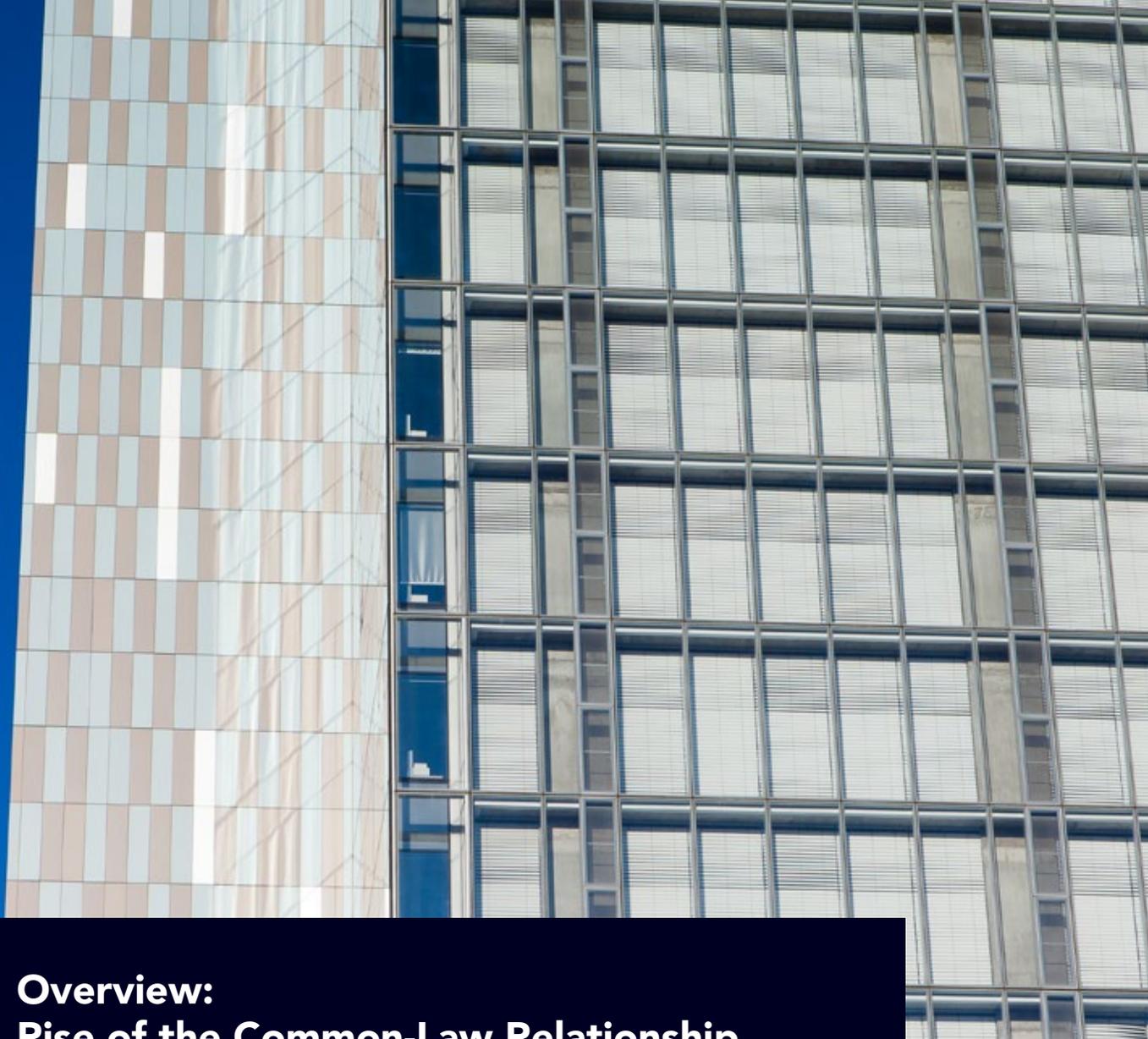


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# But We Never Said "I Do"

**Understanding your rights and obligations in  
Manitoban common-law relationships**

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## Overview: Rise of the Common-Law Relationship

More than 87,530 people in Manitoba report that they are living in a common-law relationship, and countless others are unaware of their status as common-law partners. But what is a common-law relationship and more importantly - what rights and obligations do they carry?

For many years common-law couples were not treated the same by the law as married couples were. In some instances they had some of the same rights and obligations as married couples, and in some instances they had none. There is still a significant disparity in how common-law couples and married couples are treated legally across Canada, as each province has the ability to govern their own laws with respect to common-law couples. In Manitoba, common-law couples have virtually the same rights and obligations as married couples.



## Common Assumptions about Common-Law Relationships: True or False

### 1 You have to register your status to become a common-law couple.

**FALSE.** Two individuals can become a common-law couple simply by living together in a marriage-like relationship for the prescribed length of time. The exact amount of time varies depending on the right or obligation considered, however there is no formal process necessary to become a common-law couple.

### 2 You can be in a common-law relationship with one person even if you are married to another person.

**TRUE.** If you are separated from your spouse but still legally married, and have been living with a new partner in a marriage-like relationship, you can have a married spouse and a common-law partner at the same time. This means you also have rights and obligations with both your spouse and common-law partner.

### 3 If you are not considered common-law partners, you have no rights to property gained in a relationship.

**FALSE.** Even if you have not been living in a marriage-like relationship for three years (or one year with a child together) as *The Family Property Act* stipulates, you may still have a claim for the division of property under tort law, for example: the doctrine of unjust enrichment. This means that you claim for compensation for property under tort law was enriched without merit at your expense. A common example of this is when you have financially contributed to property that is in your partner's name alone.

### 4 Common-law relationship laws are the same across Canada.

**FALSE.** What constitutes a common-law relationship and the rights and obligations individuals in them have differs greatly across the country. Common-law relationships are, for the most part, governed by provincial legislation, which means that each province makes its own decisions regarding the legal implications of common-law relationships. This has resulted in vastly different laws from province to province.

# Definition of a Common-Law Relationship

In Manitoba, a relationship is considered common-law when two people over 18 who are not married to each other are living in a conjugal relationship. Common-law relationships include same-sex and opposite-sex couples.

## How Does a Couple Become Common-Law Status?

In Manitoba there are two ways in which a couple can become common-law. The first is by registering as a common-law couple with the Manitoba Vital Statistics Agency, the second is by the passage of time.

### Registration

A couple can register their relationship as common-law by filling out a form with the Manitoba Vital Statistics Agency. In order to do so both parties have to be 18 years or older, and have to be living in a conjugal relationship in Manitoba. The parties cannot be married to anyone and they must also not be in any other common-law relationships.

### Passage of Time

Many people are surprised to learn that a couple can also achieve common-law status simply by the passage of time. In order to become common-law by the passage of time a couple must be living in a conjugal relationship, usually for a minimum of three years. There are some exceptions to this: for example, the time period drops to one year if the parties have a child together, or for certain government purposes, a couple need only be living together in a conjugal relationship for one year. An individual can be married to one person *and* in a common-law relationship with another due to the passage of time. This can occur when an individual is separated from their spouse but not legally divorced, and they have been living with a new partner for three years.

*Definition of a Common-Law Relationship continued.*

## **What is Considered Conjugal?**

A common area of confusion is what is considered a “conjugal” relationship. Simply living with a roommate for three years will not trigger common-law rights and obligations; the individuals need to be in a conjugal relationship. Whether or not two individuals are in a conjugal relationship is determined by the dynamics of their relationship.

### **Some factors which are considered in determining if a relationship is conjugal are:**

- Living under the same roof;
- Presenting themselves as a couple to others;
- If they have a sexual relationship;
- If they maintain an attitude of fidelity to each other;
- Their sleeping arrangements;
- If they participate in community or neighbourhood activities as a couple;
- If they share household chores or perform any personal services for one another.

This is not an exhaustive list, and every factor on the list need not be met to be considered to have a conjugal relationship. For example, many couples can be in a conjugal relationship even if sex is not yet or no longer an element of their relationship.



## When Does a Common-Law Relationship End?

How a common-law relationship ends is dependent on how it started.

### Registration

If a couple began their relationship by registering at the Manitoba Vital Statistics Agency, then in order to cease to be a common-law couple they must register a dissolution at the Manitoba Vital Statistics Agency after one year of living separate and apart.

### Passage of Time

If a couple becomes common-law by the passage of time then they can only cease to have their associated rights and obligations the same way: by living separate and apart for three years. It is important to know when a common-law relationship terminates as this affects the parties' ability to apply to the court for relief such as property division or spousal support as discussed below.

### What is "Separate and Apart"?

Another term that causes some confusion is what it means to be living "separate and apart". The same factors used to determine a conjugal relationship are used to determine if a couple is living separate and apart. Again, the list is not exhaustive or a simple check list. For example, a couple can remain living in the same home, but be living separate and apart in most other capacities. Living separate and apart simply means that the couple has decided no longer to continue their romantic relationship.

# Common-Law Status: Why Does it Matter?

## Spousal Support

When common-law partners separate they can seek spousal support from their former partner under *The Family Maintenance Act*. Whether the partners were common-law or married will not affect an individual's entitlement to spousal support or any spousal support order granted.

## Assets and Liabilities

Property laws in Manitoba do not vary between married couples and common-law partners. Under *The Family Property Act*, common-law couples have equal property rights. This means that each party has a right to one half of the property acquired by either party during the cohabitation of the couple. This includes both assets and liabilities of the parties. There are exceptions in place that make some property not shareable. For example, gifts and inheritances are non-shareable property unless treated as a family asset. As well, property which was pre-acquired is non-shareable, although any appreciation or depreciation of their value during the relationship can be shareable.

## Financial Disclosure

The requirement to exchange financial information in resolving a relationship breakdown is the same for married and common-law couples. This includes disclosing your income information such as income tax returns and paystubs along with disclosure regarding all your assets and debts.

## Will and Estates

In Manitoba, married and common-law couples have the same rights when it comes to estate issues. *The Wills Act*, *The Dependent's Relief Act*, and *The Intestate Succession Act* use the same definition for common-law as *The Family Property Act*. These estate statutes give common-law couples the same rights and obligation as spouses in estate matters.

## Children

In Manitoba, child custody and child support are determined the same way whether the parents are married, common-law, or neither. Child custody and child support laws are child-centric, meaning that they are designed to focus on the best interests of the child and therefore, the nature of the parents' relationship is not determinative. The only difference is that married couples can apply for relief related to child custody and support under the federal *Divorce Act* or, provincially *The Family Maintenance Act*, but parents of children who are not married can only apply under *The Family Maintenance Act*. Regardless of which legislation is used, the law surrounding child custody and child support is virtually the same.

*Common-Law: Why Does it Matter? continued.*

## **Federal Matters**

**Canada Pension Plan:** If you have lived with a partner in a marriage-like relationship for one year you earn rights to their Canadian Pension Plan (“CPP”) pension credits. After being separated for at least 12 months, a common-law partner can apply to divide the pension credits earned by their partner for the duration of the time they were living together. If your common-law partner dies, you can receive CPP survivor benefits for them.

**Old Age Security:** If you have lived with a partner in a marriage-like relationship for one year the Old Age Security (“OAS”) will consider you a common-law couple. Under OAS, common-law partners are eligible for a survivor allowance.

**Income Tax:** If you have been living together for one year in a conjugal relationship (or less if you have a child together), the Canada Revenue Agency considers you to be in a common-law relationship and you must file your taxes as a common-law couple.

**Citizenship and Immigration:** For the purposes of citizenship and immigration, a common-law partner refers to a person who is living in a conjugal relationship with another person (opposite or same sex) and has done so continuously for a period of at least one year.



# Cohabitation Agreements: How not to Incur the Same Rights and Obligations as Married Couples

A Cohabitation Agreement is a domestic contract that a couple can choose to enter into that allows them to “opt out” of laws surrounding common-law couples and to dictate how they wish for their affairs to be governed. Cohabitation Agreements can be comprehensive, dealing with all aspects of a relationship – from estate matters, to property, to support and more – or limited to only the areas in which the couple wishes to divert from the current law.

## Cohabitation Agreements Applied to Common Scenarios

### 1. Unequal Contributions to a Family Home

Amelia and Jack have been living together in a conjugal relationship for four years. They decide to purchase a house together for \$200,000. Amelia contributes \$20,000 to the down payment on the house, and Jack contributes \$10,000. Two years after purchasing the house Amelia and Jack separate. Amelia stays in the house and Jack moves out. The mortgage has a balance of \$146,000 at the date of separation. The value of the home has stayed at \$200,000.

#### No Cohabitation Agreement

Jack is entitled to 50% of the family property. As the house was purchased during the relationship, it is considered family property. Jack can seek an equalization payment from Amelia for 50% of the equity in the home. As they currently have \$54,000 in equity in the home, Jack is entitled to a \$27,000 equalization payment from Amelia in exchange for her transferring the home into her name alone.

#### Cohabitation Agreement

Jack and Amelia have a Cohabitation Agreement which stated that they each were entitled to keep their proportionate contribution to the down payment in the event that they separated. In this case, the \$30,000 in down payments would be removed from the total equity, for a total of \$24,000 in equity to divide. Therefore, Jack would receive \$12,000 in equity, plus his \$10,000 down payment for an equalization payment of \$22,000 from Amelia in exchange for her transferring the home into her name alone. A Cohabitation Agreement would protect Amelia from having to share the value of her larger contribution to the down payment with Jack, in the event that they separate.

## 2. Business Assets

Paul and Lisa have been living together for ten years. Eight years ago Paul started his own business, IXV Technologies Inc. The business is very successful, and a business valuation estimates that the company is worth \$1,000,000. Lisa is a teacher and is not involved in IXV Technologies Inc. in any capacity. Paul and Lisa separate.

### No Cohabitation Agreement

As the business was started during the relationship, the entire value of the business is considered family property. This means that Lisa is entitled to 50% of the value of the business. Paul would be required to make an equalization payment of \$500,000 to Lisa in order to keep his business free and clear from Lisa. If most of the value of the company is tied up in non-liquid assets, and Paul is unable to obtain financing for the equalization payment, it could be crippling to IXV Technologies Inc.

### Cohabitation Agreement

Before Paul started his company, he and Lisa entered into a Cohabitation Agreement that stated that Lisa would have no claim to any business interests that Paul has in his name alone. In the event of separation, Paul would be able to retain any business assets in his name, free and clear from any claim by Lisa. IXV Technologies Inc. would not be impacted by Lisa's and Paul's separation.

### 3. Spousal Support and Income Disparity

Alex and Sam have been living together for 15 years. Prior to meeting each other, they both had previous marriages which ended in divorce. Alex is a radiologist and makes approximately \$350,000 per year. Sam is a graphic designer and makes approximately \$65,000 a year. Sam contributes to household expenses, but Alex pays the majority of their expenses. Sam would be unable to maintain their lifestyle without Alex's income. Alex and Sam separate.

#### No Cohabitation Agreement

Sam has the ability to apply to the court to seek spousal support from Alex. The court can order Alex to pay Sam spousal support. Spousal support is discretionary, however based on Sam's and Alex's circumstances, Alex could have to pay spousal support to Sam in the amount of \$7,125 a month for a period of up to 15 years.

#### Cohabitation Agreement

Sam and Alex had a Cohabitation Agreement, which included a spousal support waiver. The waiver stated that they did not intend for their relationship to create financial interdependence, and they waived their right to seek spousal support from the other party in the event that they separated. If Sam sought spousal support from Alex in court, Alex could use their Cohabitation Agreement to seek a summary judgment that spousal support should not be awarded. Sam would have to challenge the validity of the Cohabitation Agreement or show that the spousal support waiver was unconscionable before being awarded spousal support from the court.

## The Future of Common-Law Relationships

Common-law relationships have increased exponentially in past decades, and it would seem that this increase in popularity will not slow anytime soon. Regardless of whether people delay marriage for careers or education, or abstain from the tradition altogether, we see a growing number of couples in common-law relationships. Manitoba is one of the most progressive provinces in terms of treating common-law relationships the same as official marriages, and other provinces will likely follow suit.

Family matters are all unique and can be very complicated depending on the individual circumstances. Additionally, the law on common-law relationships is constantly evolving and changing. For the most accurate information, contact a lawyer to discuss your specific situation. If you wish to learn more about your rights and obligations as a common-law partner or wish to discuss the benefits of a Cohabitation Agreement, contact a family lawyer today.

### Seeking a family lawyer?

Arrange a consultation with our experienced family law team today.

[CONTACT KYLA](#)



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