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Skip to content Posted by heritagelawoffices on Dec 2, 2021 in Blog, Family Law Have you been living with a significant other for an extended period of time? You may not know it, but you could be living in a common-law living arrangement under the eyes of the law and a cohabitation agreement may help. This label entitles each member of the relationship to minimal protection in the case of separation and other forms of estrangement. Relying on these laws is unwise, as the living situation is subject to close examination by a court representative. Also, Alberta common-law rules are quite strict. If you leave your partner, or if your partner leaves you, the end result may not be what you expect! Keep reading our guide below about cohabitation agreements and feel free to contact Heritage Law if you have any questions. What are the Cohabitation Laws in Alberta? As of 2003, the term "common-law" is technically not used when it comes to Alberta laws. Instead, the current term is "adult interdependent relationships" and the legal rights and responsibilities of these relationships differ depending on your jurisdiction. This type of relationship exists if two people have signed an Adult Interdependent Partner Agreement, if two people have lived together for three years or more in a relationship, or if two people living in a relationship have a child together. These laws depend on whether or not the two individuals are living in a "relationship of interdependence" which occurs when they share one another's lives, are emotionally committed to each other, and function as a domestic unit. This relationship does not have to be sexual and can be a platonic one between friends or relatives. This distinction is important since it implies that roommates or family members living together can take advantage of cohabitation agreements to protect their livelihood and assets. The Adult Interdependent Relationships Act of Alberta is important because it creates a legal relationship between two people who are not married. An adult interdependent relationship can be terminated if the partners sign a written agreement stating their separation, the partners live separately and apart for more than one year, the partners marry each other or one partner marries/enters into an adult relationship with someone else. What is a Cohabitation Agreement? A Cohabitation Agreement is a notarized document that is signed by both parties (two unmarried people who are living together). It is put in place to provide concrete rights and obligations for each individual in case the relationship cannot be sustained. These agreements can provide for division of property or wealth as well as alimony (spousal support), forms of child support, and other contingencies. In order to create a cohabitation agreement, both parties must sign the agreement in front of a witness as well as be open and honest about their financial situations. There cannot be any threats or pressure when it comes to signing this agreement. It is recommended that both individuals seek independent legal advice and be represented separately. While you can write your own cohabitation agreement, a lawyer can ensure that your interests are protected and that the document is legally binding. What Happens If I Don't Have a Cohabitation Agreement in Alberta? If you don't have a cohabitation agreement with your common-law partner, your ex may have a legal claim to some of your shared assets in the event of a break-up. You can also be held responsible for the debt they accrued during your relationship. When it comes to shared property or assets, these are things you acquired together while in the relationship. With a valid cohabitation agreement, your property is divided according to the specifics of the agreement. Without a cohabitation agreement, you can agree with your partner on how to divide your assets. However, if you can't come to an agreement, the issue may have to be taken to court where the law of unjust enrichment will be applied. The law of unjust enrichment states that one person can not become richer from the contributions that the other person made. It's important to note that child support or child custody issues are not addressed in a cohabitation agreement. These agreements are solely to provide protection when it comes to the division of finances and property. Do I Need a Cohabitation Agreement? Cohabitation agreements are not a legal requirement and not everyone needs one. However, if you're uncertain as to whether or not it is necessary for your relationship, ask yourself the following questions: Are you over the age of 18? Are you currently in, or about to engage in a shared living arrangement? Are you interested in protecting your assets or ensuring that your partner is cared for after your relationship is over? If you answered "yes" to these questions, you should consider getting a cohabitation agreement! Other factors can also apply so be sure that you and your partner both receive legal advice. Is a Cohabitation Agreement Equal to a Prenuptial Agreement? Many couples expect that cohabitation agreements serve the same purpose as prenuptial agreements due to their similarities. However, cohabitation agreements only apply to non-married partners living together. If you are currently protected by a cohabitation agreement and you are planning on getting married, it is in your best interest to update to a prenuptial agreement. Curious About Cohabitation? No one wants to think about breaking up while they are in a relationship. However, having a cohabitation agreement is a simple step you can take to protect your property and ensure the separation is as amicable as possible. So if you are involved in an adult interdependent relationship, what are you waiting for? Our team at Heritage Law is here if you have any questions about common-law relationships and cohabitation agreements. Contact us today for a personal consultation with our legal experts. We will explore your needs and customize your agreement - and we can even refer counsel to your partner if necessary. Legal document outlines rights and duties of unmarried partners. The examples and perspective in this article deal primarily with the United Kingdom and do not represent a worldwide view of the subject. You may improve this article, discuss the issue on the talk page, or create a new article, as appropriate. (December 2010) (Learn how and when to remove this message) A cohabitation agreement is a form of legal agreement reached between a couple who have chosen to live together (whether they are heterosexual or homosexual). In some ways, such a couple may be treated like a married couple, such as when applying for a mortgage or working out child support. However, in some other areas, such as property rights, pensions and inheritance, they are treated differently. A cohabitation agreement contains documentation for a couple who want to live together in order to protect themselves from unnecessary cost and litigation should their cohabitation break down. They can clearly regulate their property rights and what arrangements might be made for mutual financial support, dealing with debt, caring for children, etc. The agreement also, much like a prenuptial agreement, allows the individuals concerned to determine in advance who will keep specific assets and what will happen to assets that have been purchased jointly if they separate. This agreement is intended to bind both parties. Cohabitation agreements can provide the members of a relationship the sense that their financial commitments to each other will be enforceable, and that assets acquired or improved during the relationship will be divided fairly. In the absence of an agreement it may be difficult to determine ownership of assets acquired during a relationship. For assets such as real estate or motor vehicles, ownership may be resolved based upon title ownership without regard to whether the partner not named on the title contributed to the purchase or maintenance.[1] Main article: Common-law marriage Common law marriage occurs when two people enter into a marriage without going through the formalities typically required, such as obtaining a marriage license or having a formal marriage ceremony. Not all jurisdictions recognize common law marriage, and there are no common law jurisdictions in which cohabitation of itself will result in a couple being regarded as legally married.[2] Main article: Prenuptial agreement Prenuptial agreements are often used when one or both parties to a planned marriage want to protect their assets from claims by the other in the event that the marriage ends in divorce. The contract aims to achieve a measure of certainty about what the financial consequence would be if the marriage came to an end. Courts may retain discretion about whether or not a prenuptial agreement will be upheld.[3] Civil union Samenlevingscontract " Standley, Kate (1993). "Cohabitation". Family Law. Houndmills, Basingstoke, Hampshire: Macmillan. p. 263. ISBN 978-0-333-58529-0. Thomas, J. (2009). "Common Law Marriage". Journal of the American Academy of Matrimonial Lawyers. 22: 151. Prince, Harry G. (1985). "Public Policy Limitations on Cohabitation Agreements: Unruly Horse or Circus Pony". Minnesota Law Review. 70: 163. Retrieved June 26, 2023 by Camille Boyer, Calgary Family Lawyer Entering into a committed relationship or preparing for marriage is an exciting time in one's life. However, agreeing with the joy and anticipation, it is essential to address the practical and legal aspects that come with such unions. Cohabitation and marriage bring about legal rights and responsibilities, financial considerations, and the potential for unforeseen circumstances in the future. Whether you're planning to move in together or preparing for a wedding, understanding the legalities and implications of cohabitation and prenuptial agreements is crucial. The following blog will clarify some of the most important points about these agreements and what they mean for you. What is a cohabitation agreement, and why should I consider having one in Alberta? A cohabitation agreement is a legal document that outlines the rights and responsibilities of individuals who are defined as Adult Interdependent Partners ("AIPs") in Alberta. An AIP is similar to what many people refer to as "common law", although the definition of AIP also includes married persons. A cohabitation agreement is designed to address various issues that may arise during the relationship or in the event of separation, such as property division, financial matters, and support obligations. Why should I get a cohabitation agreement? Unfortunately, a pervasive and potentially harmful misconception exists that individuals living under "common law" arrangements don't require such agreements due to their unmarried status. This is inaccurate and can lead to unforeseen legal complexities. Should a couple qualify as an AIP under the Adult Interdependent Relationships Act, whether married or not, their property and support rights are going to be the same or very similar to those of a married person. Therefore, avoiding marriage does not necessarily avoid the risks one would be aiming to avoid getting a prep. Here are some other reasons why you should consider having a cohabitation agreement in Alberta: Clarity and certainty: A cohabitation agreement allows you and your partner to clearly define your respective rights and obligations. It can provide certainty and peace of mind by establishing clear expectations and guidelines for various aspects of your relationship. Healthy relationships: Having discussions about finances and other matters is extremely important in a relationship. Too often, people avoid these uncomfortable topics until it is too late, and the couple is left fighting over money which is a leading cause of divorce. Establishing a clear agreement beforehand, outlining the expectations, guidelines, and respective rights and responsibilities within the relationship, often mitigates any potential power imbalance. It also serves as a preventive measure against contentious financial disputes between partners. Protection of assets: With a cohabitation agreement, you can protect your individual assets, including property, investments, and savings, by specifying how they will be divided in the event of separation or the end of the relationship. This can help prevent disputes and potential financial losses. Financial matters: A cohabitation agreement can address financial matters such as how expenses will be shared, how joint accounts will be managed, and how debts will be allocated. It can also outline provisions for financial support during the relationship or in the event of separation. Protecting business and professional assets: If you own a business or have professional assets, a cohabitation agreement can protect these assets from being subject to division or claims in the event of separation. Avoiding disputes and litigation: By clearly documenting your intentions and expectations in a legally binding agreement, you can minimize conflicts and reduce the likelihood of costly legal disputes if the relationship ends. It can provide a roadmap for resolving issues amicably. Tailored to your needs: A cohabitation agreement can be customized to reflect your specific circumstances and priorities. It allows you and your partner to negotiate and agree upon terms that suit your unique situation, rather than relying on default legal rules. What is a prenuptial agreement, and how does it differ from a cohabitation agreement? A prenuptial agreement, also known as a prenup, is a legal document that is entered into by a couple before they get married. It outlines the rights and obligations of each spouse during the marriage and in the event of separation, divorce, or death. A prenuptial agreement is signed by couples who are living together without being married, whether or not the couple actually intends to get married. What are the key differences between a cohabitation or prenuptial agreement in Alberta? Both cohabitation agreements and prenuptial agreements can address a wide range of matters and can be tailored to suit the specific needs and circumstances of the couple involved. Here are some key elements that can typically be included in a cohabitation or prenuptial agreement in Alberta: Property division: A prenuptial agreement can specify how property, assets, and debts acquired before and during the relationship will be divided in the event of separation, divorce, or death. Financial matters: Prenups can outline how financial matters will be managed during the relationship, including the allocation of expenses, handling of joint bank accounts, and managing debts. Spousal support: The prenuptial agreement can also address the issue of spousal support, including whether it will be paid, the amount, and the duration, if applicable. Inheritance and estate planning: Provisions regarding inheritance rights, the distribution of assets upon death, and any estate planning considerations, can also be included in any prenuptial agreement. Protection of business or professional assets: If one or both parties own a business or have professional assets, a prenuptial agreement can outline how these assets will be protected in the event of separation or divorce. Dispute resolution: Prenuptial agreements can include provisions for alternative dispute resolution methods, such as mediation or arbitration, to resolve any conflicts that may arise. What are the requirements for a cohabitation or prenuptial agreement to be valid in Alberta? To be valid and enforceable in Alberta, both cohabitation agreements and prenuptial agreements must meet certain requirements. While it's important to consult with a family lawyer for specific guidance, here are some general requirements for the validity of these agreements in Alberta: Voluntary and informed consent: Both parties must enter into the agreement voluntarily and without any coercion or duress. They should both have a clear understanding of the terms and implications of the agreement. In writing: Cohabitation and prenuptial agreements must be in writing. Verbal cohabitation and prenuptial agreements are not enforceable. Full disclosure: Both parties must exchange full and honest disclosure of their assets, liabilities, income, and financial information. This is essential to ensure the agreement is enforceable. It also ensures that both parties have a complete understanding of each other's financial situation when entering into the agreement. Independent legal advice: Parties must obtain independent legal advice from separate lawyers. This helps ensure that each party's rights and interests are protected and that they have a clear understanding of the agreement's implications. This is a very important formal requirement of prenuptial and cohabitation agreements. Additional information about the requirement to receive independent legal advice can be found in our blog, Legal Advice for Family Law Agreements. No violation of public policy: The agreement should not contain provisions that violate public policy or are illegal. Can I modify or amend a cohabitation or prenuptial agreement after it has been signed? Typically, these agreements would contain a variation clause setting out the process to modify or amend the agreement. Most likely, such amendment or modification would require both parties to capture any agreed upon changes in an addendum or further agreement, witnessed and signed by the parties and their separate lawyers, with certificates of independent legal advice. What happens if we don't have a cohabitation or prenuptial agreement in Alberta? Couples who choose to forgo a prenup or cohabitation agreement may find the separation and divorce process extremely painful, drawn out, and expensive. Entering into these types of agreements, generally, make separation much easier and less conflictual as everything is clearly spelled out in the agreement. This is similar to a person who passes away with a will, versus passing away without one. The will is a roadmap for the division of that person's assets to the beneficiaries, rather than leaving it to them to fight it out. With a cohabitation or prenuptial agreement, there generally isn't much to fight about because the agreement sets out the financial and other aspects of separation for the parties. What steps should I take if I want to create a cohabitation or prenuptial agreement in Alberta? If you are considering creating a cohabitation or prenuptial agreement in Alberta, it's important to follow certain steps to ensure the process is smooth and the resulting agreement is valid and enforceable. Here are the general steps you should consider: Discuss the agreement: Start by having open and honest discussions with your partner about the need for a cohabitation or prenuptial agreement. Discuss your respective expectations, concerns, and goals. It's crucial to approach the conversation with transparency and mutual understanding. Seek independent legal advice: Each party must seek independent legal advice from separate family lawyers who are experienced in drafting cohabitation or prenuptial agreements. They can provide personalized guidance, explain the legal implications, and ensure that your rights and interests are protected. Full financial disclosure: Both parties must provide complete and accurate financial disclosure, including assets, liabilities, income, and any other relevant financial information. This disclosure is essential to ensure transparency, enforceability, and fairness in the agreement. Identify and prioritize key issues: Determine the specific issues you want to address in the agreement. This may include property division, spousal support, financial matters, and any other concerns particular to your situation. Clearly identifying and prioritizing these issues will help guide the drafting process. Negotiate and draft the agreement: Work with your respective lawyers to negotiate and draft the cohabitation or prenuptial agreement. The agreement should reflect the discussions, considerations, and agreements reached between you and your partner. Ensure that the agreement is comprehensive, clear, and aligned with your intentions and needs. Review and understand the agreement: Carefully review the drafted agreement and seek clarification on any provisions that you don't fully understand. It's crucial to have a clear understanding of the rights, obligations, and implications outlined in the agreement. Retain copies: Make sure to keep fully executed copies of the agreement for both parties. It's advisable to keep the original document in a secure location. Review and update: Periodically review the agreement to ensure it remains relevant and aligned with your current circumstances. How much does it cost to draft a cohabitation or prenuptial agreement? Should your circumstances be complex or necessitate preliminary negotiations and divorce, the cost varies considerably. It hinges on a number of variables including the degree of complexity, the duration of the negotiations, the individual hourly rate of the lawyer you hire, and many other factors. However, if the parties are on the same page about what to include in the agreement and the situation is not overly complex, it is likely they will be able to take advantage of the flat-fee offered by Crossroads law for the drafting of these agreements. The skilled team of legal professionals at Crossroads Law are deeply knowledgeable in the subtleties of cohabitation and prenuptial agreements. Whether you're cohabitating or preparing for a wedding, it's crucial to understand the legal nuances and implications involved. We are dedicated to safeguarding your interests at every turn. To delve deeper into how cohabitation and prenuptial agreements might impact your unique situation, schedule a complimentary 20-minute consultation with any one of our seasoned lawyers or mediators today! The information contained in this blog is not legal advice and should not be construed as legal advice on any subject. The information provided in this blog is for informational purposes only. Share — copy and redistribute the material in any medium or format for any purpose, even commercially. Adapt — remix, transform, and build upon the material for any purpose, even commercially. The licensor cannot revoke these freedoms as long as you follow the license terms. Attribution — You must give appropriate credit , provide a link to the license, and indicate if changes were made . You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use. ShareAlike — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original. No additional restrictions — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits. You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation . No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material. The Stresses of Home BuyingPurchasing a home is often an exciting yet stressful endeavor. The financial magnitude of the transaction, coupled with concerns about the property's true condition, can increase anxiety levels. While realtors and home inspectors play a vital role, they can't guarantee a defect-free property. The archaic principle of "buyer beware" remains a critical consideration during home purchases, underscoring the importance of diligent property evaluation even in today's market. The Lawyer's Role in Conveyance:A pivotal aspect of buying and selling a home in Alberta involves the lawyer's role in the conveyance process. This involves ensuring the correct transfer of property ownership, managing financial transactions, and handling various legal aspects such as tax arrears, mortgage registrations, and payout of commissions. In scenarios where bank documents are required, legal fees may increase compared to cash deals or straightforward transfers. Key Responsibilities in Conveyance: - Ensuring correct property transfer- Managing deposits and financial transactions- Handling tax, mortgage, and commission-related liabilitiesLimitations of Legal Services in Property Transactions:It's crucial to understand that a lawyer's services in property conveyance do not extend to advising on defects discovered post-purchase or handling legal matters after the completion of the property transfer. Once the conveyance is finalized, the lawyer's role typically concludes, unless the purchase contract includes specific provisions for post-sale work or holdbacks agreed upon by both parties. Post-Conveyance Considerations:- Legal advice on discovered defects is not included- No obligation for legal assistance in post-sale disputes- Need for specialized litigation services for legal disputes Transition from Conveyance to Litigation:In the event of a dispute, such as undisclosed defects or issues that could have been identified with due diligence, a separate legal representation specializing in litigation may be required. This distinction between conveyance and litigation is crucial, as they are distinct legal fields. If disputes arise after your real estate deal closes, UrbanLawyers can assist in the civil litigation process as well. We have experienced lawyers who can assist you for closing the purchase of your home and also, dealing with any disputes that arises afterwards. Your Partner in Home Transactions:Despite the complexities, a lawyer can significantly reduce the stress associated with home purchases in Alberta. They ensure a smooth conveyance process and provide guidance during document signing. While rare, if disputes arise post-conveyance, understanding the need for specialized litigation services is essential. Remember, asking questions and seeking clarifications during the process can greatly alleviate any anxieties associated with home buying.Disclaimer:This blog post is for informational purposes and is not intended as legal advice. The circumstances of each case are unique. For personalized legal advice, please reach out to Urban Lawyers directly at 780-228-7226. Do not send any confidential information until a client-lawyer relationship has been formally established through a retainer agreement.Ready for Legal Support?If you are looking to buy or sell a property in Alberta, contact Urban Lawyers at 780-228-7226. If you run into a civil litigation dispute, we can assist you with that matter as well. As your legal advisors, we'll handle the complexities of your case and advocate for your best interests.Please wait to share any sensitive details of your case until after a formal lawyer-client relationship has been established. Cohabiting couples are those who are not married or in a civil union yet live together. The number of these cohabiting couples is sharply rising over recent years. As their separation is not in the conventional norm, it often leads to a rise in complex legal disputes. Cohabiting couples can enter into a Cohabitation Agreement to avoid these legal uncertainties. Cohabiting couples have a romantic notion. They usually don't believe in marriage or don't like to be in a civil union. However, the reality is a bit harsher. Separation of cohabiting couples always leaves the weaker partner in a vulnerable state, especially when the children get involved. That's why unmarried couples need to enter into a Cohabitation Agreement. So you need to know what exactly a Cohabitation Agreement is and why it is essential for you. A cohabitation agreement is a legal agreement between unmarried couples who have decided to live together. It outlines how they share their assets, who will get custody of children and many other vital issues. It's much like a prenuptial agreement though they have some differences. A cohabitation agreement has more flexibility. When a married couple breaks up, both parties get legal tasks to complete. Everything is sorted out. Who will get what portion of assets, who will get spousal support, who will get child custody, etc.? No matter how long they live or whether they have children, cohabiting couples don't have such kind of rights. Let me give you an example of how a cohabiting couple can suffer after separation. Suppose the one partner moves to another partner's residence. They live together for quite an extended period. He/she even has contributed to his/her partner's mortgage. Now if they split up, he/she will have no legal right to share his/her property. You can imagine the vulnerability of that partner. Apparently, the only way this couple can get protection by entering into a cohabitation agreement. This agreement will let the couple document how you will divide your property, savings, personal belongings, etc. when they split up. It also deals with child support, bank accounts, and debts. Furthermore, the couple can fix how much each contributes to mortgage and bills. It even covers up the partner's day to day finance. These are the following steps to get a cohabitation agreement in Canada- Each party should hire a lawyer before the agreement. The lawyer makes sure that his/her clients understand the deal before they sign it. The lawyer and couple should negotiate over the things they want to include or exclude in their contract. It is a very crucial part of the deal. In this way, the partners can avoid future legal fights and other possible complications. In this step, you have to disclose all your financial documents. This includes your income and debts, savings, CPP, investments, and RRSP's. This way, the agreement can ensure that both parties will get a fair share when they separate. Both your lawyer and your partner's lawyer should review every paper in detail. The writing and document may not be valid in court if it's not adequately evaluated. Once both parties are satisfied, the material is signed. Want to know more about the cohabitation agreement in Canada? Here are some interesting facts for you- The cost of the cohabitation agreement Alberta Home Advice \$2,000 and \$3,500. The cohabitation agreement in Ontario is a bit costly. It may cost you around \$2,500 to \$5,000. Cohabiting couples want to buy a property together but have some differences. A cohabiting couple starts by weighing their assets against benefits and continues to do this at every step of the process. Because we assign tasks to the people at the right seniority and skill levels, you aren't paying higher fees unnecessarily. There are set factors that will determine what your flat rate will be. Child, location of other party, and other situational factors come into play. Our family law legal fees* start at the above rates* For all the above, GST and Disbursements are not included in the above legal fees. Cohabitation / Prenup \$1,000 - \$1,500 range (Only done by a lawyer with 6+ years experience due to complexity of law) Separation Agreement \$750 - \$1,000 range *The above fees represent the initial flat fee for each service. The flat fee may increase, depending on complexity of the issues and any necessary additional drafting time. Any increase in the flat fee will be discussed with the client in advance. **The above fees include the cost to draft and execute the necessary documents with the client. Any additional time spent negotiating a settlement, exchange or reviewing financials or any additional work, may result in the charge of additional fees. The matrimonial law lawyers at Kahane Law Office offer family law consultations billed hourly for only the time spent consulting with the lawyer. This link will direct you to the flat rate family law consultation page. Why all Family Law Matters Cannot be Flat Rate Unfortunately, with conflict, there is uncertainty in how long or the requirements to finalize a matter. Lawyers bill their family law legal fees based on time. For uncontested matters we know the time it will take to help you. Couples can disagree and change their minds repeatedly with contested issues. While we respect that people should strive for the outcome they desire, these matters do not fit into a flat rate situation. What Our Family Law Legal Fees Include The above flat rate family law legal fees include our easy to use information questionnaire, a pre-drafting meeting to go over your family law questionnaire (where required), drafting all the requisite documents requested and a final meeting to review, explain and sign the documents. These family law legal fees are for the majority of uncontested family law matters. If your specific situation does not fit into our flat rate family law legal fees structure, we will let you know in advance of you owing us anything. If your matter changes from an uncontested flat rate situation to one where we negotiate or deal with conflicts, we always advise you of a fee change prior to you incurring extra fees. This is our commitment to you. Things Not Included In Our Fees In uncontested situations our fees are firm. If there is or if it becomes conflicted, there may be additional charges. We let you know in advance, but some of the things not included are: service on an individual (we do not charge for service made at our office), ordering marriage certificates, negotiations, court appearances, re-drafting of documents because of changing agreements and independent legal advice. You are also responsible for disbursements (court filing fee, court runners, etc. We will explain everything to you.). Understanding Family Law Legal Fees We try to be very clear about what our fees include. If you have any questions about what is included, do not hesitate to ask. Many people think that their situation is extremely complicated and that they do not fit in a flat rate legal fee situation. With family law legal fees we will know if your situation does or does not. If they do, the flat rate fee will be determined by the complexity and elements involved. For example, if more work is required due to situations with children compared when couples do not have children. Our experience is that most people do fit into our affordable family law legal fee structure. This is something that the Law Society encourages all lawyers to do regarding their fees. Payment Of Family Law Legal Fees When retained by a new family law client, we require a retainer when we start acting for you. Retainers and other payments are payable by cash, cheque, bank draft, debit or credit card. We hold retainers in trust and we use them to pay family law legal fees only after we render the service to you. For non-flat rate fee areas of family law, we will let you know if we require further retainer as your matter progresses. The family law legal center has more information on family law. Discounts For The Military And Veterans We, at Kahane Law Office, in Calgary, appreciate and we value the effort, hard work and sacrifice that the our Canadian Armed Forces member make (or made) for Canadians and many others across the world. We offer a special discount on our legal services for our military and veterans. Call us today for more information on our legal services and Flat Rates on Family Law Lawyer Fees Call today so that we can help you with your family law legal needs. You can reach us toll-free at 1-877-225-8917, or 403-225-8917, locally or email us directly here. In Alberta, cohabitation agreements serve a critical role for couples who live together outside of marriage. Alberta law now grants adult interdependent partners many of the same rights and obligations as married spouses, particularly when it comes to property division and spousal support. This legal framework makes it more important than ever for unmarried couples to clarify their intentions through a well-drafted cohabitation agreement. This article explains how cohabitation agreements work in Alberta, outlines the governing statutory authority, explores enforceability requirements, and highlights unique considerations under Alberta law. Are Cohabitation Agreements Permitted in Alberta? Yes. Cohabitation agreements are permitted and expressly recognized under Alberta's Family Property Act, SA 2003, c F-4.7. This statute governs how property is divided when a relationship ends and allows parties to contract out of its default rules. Under section 37 of the Family Property Act: "Part 1 does not apply to property that is owned by either or both spouses or adult interdependent partners or that may be acquired by either or both spouses or adult interdependent partners, if, in respect of that property, the spouses or adult interdependent partners have entered into a subsisting written agreement with each other that is enforceable under section 38 and that provides for the status, ownership and division of that property." This provision confirms that unmarried spouses (i.e., adult interdependent partners) can sign enforceable agreements that override the property division regime otherwise applicable under the Act. Cohabitation agreements are further supported by Alberta's Adult Interdependent Relationships Act, SA 2002, c A-4.5, which defines the relationships to which many of these rights and obligations apply. Who Qualifies as an Adult Interdependent Partner? Alberta does not use the term "common-law partner" in its statutes. Instead, it uses "adult interdependent partner" (AIP). You may be an AIP if: You have lived with another person in a relationship of interdependence for at least 3 years, or You have lived together for less than 3 years but have a child together by birth or adoption, or You have signed an Adult Interdependent Partner Agreement. The rights of adult interdependent partners are extensive and often mirror those of married spouses, especially in areas of property division, spousal support, and estate law. What Can a Cohabitation Agreement Cover in Alberta? A cohabitation agreement in Alberta can cover: Ownership and division of property Classification of exempt vs. shared assets Spousal support (entitlement, amount, duration) Responsibility for debts and liabilities Financial responsibilities during the relationship Rights on separation or death Like other provinces, Alberta does not permit parties to predetermine parenting arrangements or decision-making for children in a cohabitation agreement. These matters are governed by the Family Law Act, SA 2003, c F-4.5, and must be resolved based on the best interests of the child at the time of dispute. What Makes a Cohabitation Agreement Enforceable in Alberta? To be enforceable in Alberta, a cohabitation agreement must comply with specific formal and substantive requirements. 1. Formal Requirements Under section 38 of the Family Property Act, a spousal (or adult interdependent partner) agreement is enforceable only if: It is in writing It is signed by both parties Each party has received independent legal advice (ILA) Each party's lawyer has signed a certificate of independent legal advice These formal requirements are strict. A court cannot enforce the agreement unless all four elements are satisfied. Section 38 of the Family Property Act provides: "(1) An agreement referred to in section 37 is enforceable if each party to the agreement has acknowledged, in writing, apart from the other party (a) that the party is aware of the nature and the effect of the agreement, (b) that the party is aware of the possible future claims to property may have under this Act and that the party intends to give up these claims to the extent necessary to give effect to the agreement, and (c) that the party is executing the agreement freely and voluntarily without any compulsion on the part of the other party. (2) The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other party or before whom the acknowledgement is made by the other party. 2. Independent Legal Advice (ILA) is not optional under Alberta law for agreements that deal with family property. The lawyer must: Explain the nature and consequences of the agreement Ensure the client is entering the agreement voluntarily Sign a certificate of legal advice (usually attached as a schedule to the agreement) This is a key difference from other provinces, where ILA is recommended but not required. 3. Full and Frank Financial Disclosure Alberta courts have consistently held that failure to disclose significant assets, debts, or income can be grounds for setting aside a cohabitation agreement. The disclosure should be written, itemized, and ideally referenced in the agreement itself. 4. No Duress or Unconscionability The agreement must be entered into freely and voluntarily. If there is evidence of coercion, pressure, or one party not understanding the agreement, a court may refuse to enforce it. Similarly, an agreement that is grossly unfair or unconscionable may be set aside under Alberta case law. Can a Cohabitation Agreement Waive Spousal Support? Yes. A cohabitation agreement in Alberta can include a clause that waives the right to spousal or partner support. Alberta courts have enforced such clauses, but they are not immune from challenge. Courts may override a waiver if: There was inadequate disclosure The party did not receive proper legal advice The clause causes hardship at the time of enforcement The agreement was substantively unfair when made That said, where both parties had legal advice and negotiated the agreement fairly, waivers of support are often upheld. Can a Cohabitation Agreement Address Inheritance Rights? Yes. In Alberta, adult interdependent partners have estate rights under the Wills and Succession Act, SA 2010, c W-12.2. A cohabitation agreement can be used to: Waive the right to inherit from a partner's estate Define entitlement to specific assets Clarify intentions in the absence of a will However, such clauses should be used in tandem with proper estate planning (e.g., a will or trust). An agreement alone may not be sufficient to fully displace statutory entitlements without a will to match. What Happens If My Marry? If the parties later marry, their cohabitation agreement remains valid only if it meets the formal requirements of a marriage agreement under the Family Property Act. This means: The agreement must already comply with section 38 (written, signed, ILA, legal certificates) It must not be expressly terminated by marriage The couple does not enter a new agreement that overrides the earlier one For clarity, many Alberta lawyers include a clause confirming whether the agreement survives or terminates upon marriage. Unique Constraints for Alberta Alberta has several distinct features that impact cohabitation agreements: 1. Mandatory Independent Legal Advice Unlike most provinces, Alberta requires ILA and legal certificates for any family property agreement to be enforceable. This is a hard legal requirement. 2. Adult Interdependent Partner Status The term "common-law" has no legal meaning in Alberta legislation. Partners must qualify as AIPs before statutory rights arise. Agreements can be made before the AIP relationship begins and take effect once it qualifies. 3. Property Division Rules Are Broad Under the Family Property Act, AIPs are subject to the same presumption of equal division of family property as married spouses. A cohabitation agreement is often the only way to opt out of this presumption. 4. Strong Support for Freedom of Contract Alberta courts generally support private ordering. Provided the statutory requirements are met, parties have wide latitude to define their own terms—even if the result is unequal. Best Practices When Drafting a Cohabitation Agreement in Alberta Ensure both parties receive independent legal advice, with signed certificates Exchange written financial disclosure, itemized by asset and liability Clarify what property is excluded and how it will be treated on separation Define how growth in excluded assets will be handled (shared or retained?) Include spousal support clauses, whether waived, capped, or conditional Specify whether the agreement remains valid upon marriage Avoid ambiguous or overly broad language that could cause enforcement issues Conclusion In Alberta, cohabitation agreements are not only permitted, they are essential for unmarried couples who want to retain control over their financial futures. With the introduction of the Family Property Act, adult interdependent partners now face many of the same legal consequences as married spouses upon separation. A properly executed cohabitation agreement allows couples to avoid the default rules and define their own arrangements. To be valid in Alberta, a cohabitation agreement must be in writing, signed by both parties, supported by independent legal advice, and include lawyer-signed certificates. Full financial disclosure and fairness negotiations are also crucial to enforceability. If you are considering a cohabitation agreement or have already made your decision — you are invited to call or email us. We'll explain for free how you can protect your assets and plan your estate. You can call us toll-free at (800) 407-2570 or email us using our contact form here. We can help you anywhere in Ontario, including Ottawa, Toronto, Mississauga, Brampton, and Hamilton. Related Posts Cohabitation Agreements by ProvinceCohabitation agreements are a vital tool for unmarried couples in Canada who live together or plan to do so. These agreements allow couples to define... Cohabitation Agreement TemplateHere is a template of some of the terms that may be included in a cohabitation agreement: COMMENCEMENT Names of parties RECITALS Date of cohabitation... Cohabitation Agreement ThoughtsTo many people, the idea of a cohabitation agreement is repulsive. But the reality is that if you are cohabiting with someone else, you already... Cohabitation Agreements in ManitobaIn Manitoba, cohabitation agreements are a powerful legal tool for unmarried couples who wish to define their financial rights and obligations, both during the relationship... A cohabitation agreement is a legal document in Alberta between two people in a common law relationship, or what's legally referred to as an "adult interdependent relationship". It follows many of the same principles of a "prenuptial agreement". Cohabitation agreements set out all the rights and obligations of two people whose relationship can be classified as adult interdependent. Most commonly these agreements decide who gets what and pays for what in the event of a break up. However they can set out rights and obligations during the relationship as well. For instance, they outline how shared assets will be distributed in the event of a separation between common law partners. Or they decide terms like: Many people have experienced a separation without a cohabitation agreement in place and want to avoid the legal complications that came up as a result. Without a cohabitation agreement, your partner could have legal claim to some shared assets, or you could be seen as owing some of their debt accrued in the relationship. The agreement sets out the division of property and debt, avoiding the potential of legal battles. They can also prevent one partner from unjustly profiting from their relationship with the other. For instance, if the home shared by both undergoes renovation that is contributed to by both partners, then both partners have some right to the value in the home. Depending on how the work is performed and paid for, one partner might not see that benefit without an agreement in place protecting their ownership. Agreeing to a cohabitation agreement when the relationship is healthy means that there is no legal battle waiting if the relationship doesn't work out and can create stability within a relationship. Who should have a cohabitation agreement? Any couple that meets the qualifications of an adult interdependent relationship should have a cohabitation agreement. It is to the benefit of both people in the relationship to have these legal protections. Who can't have a cohabitation agreement? The Adult Interdependent Relationships Act stipulates the following as disqualifying you from entering into a cohabitation agreement:(2) A person may not enter into an adult interdependent partner agreement if the person (a) is a party to an existing adult interdependent partner agreement, (b) is married, or (c) is a minor, unless (i) the minor is at least 16 years of age, and (ii) the minor's guardians have given their prior written consent. How can a lawyer help you with a cohabitation agreement? Walk you through all legal implications of such an agreement. Lets you know what can and can't be included. Will help you make sure you are entering into an agreement that is in your best interest (or will result in your desired outcome). It is important that you understand all facets of this agreement to gain the peace of mind that this agreement can give you. Call Now Visit our Divorce Lawyer page