

The Family Law Series

Living Together

Opposite-Sex
and
Same-Sex

Common-Law
Relationships



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Introduction

When two people live together in a “conjugal” (marriage-like) relationship without being legally married to each other, they are often referred to as living “common-law”. Over the years, the law has changed its treatment of these relationships. Common-law couples now have many, but not all, of the same rights and obligations as married couples.

If you live with someone in a common-law relationship, it is important to know the similarities and differences between that and marriage. For example, to secure some things such as an inheritance, or division of property if you separate, you must take extra steps that are not necessary if you are married.

In most cases, the law is the same whether the two people are of opposite sexes or the same sex. This booklet will point out any differences.

How is a common-law relationship different from a marriage?

To be married, you must go through a legally recognized marriage ceremony with another person. The ceremony can be a religious or a civil ceremony. But it must be conducted by someone who is legally authorized to perform and register marriages, such as a judge, a justice of the peace, or a member of a clergy.

Once you are married, you stay married until one of you dies, you divorce, or your marriage is annulled. Even if you separate and decide to end your relationship, you are still married until you take the legal steps to formally end the marriage.

But a common-law relationship is defined by two people living together as a couple. If you do not live together, you are not considered to be in a common-law relationship. If you have been living together but then stop, you are no longer common-law spouses. You do not have to take any formal steps or legal action in order to end the relationship. Also, no matter how long you live in a common-law relationship, you never become married unless you go through a legally recognized marriage ceremony.

When does the law recognize a common-law relationship?

Once a couple is married, they immediately have all the legal rights and responsibilities that come with marriage. But this is not true for common-law couples. Each right or responsibility comes from a particular law. And each law has its own definition of when a common-law relationship begins.

In most Ontario laws, you are considered common-law spouses once you have been living together for three years, or as soon as you have a child together no matter how short a time you have been living together.

In most federal laws, the common-law relationship is recognized once you have been living together for one year, whether or not you have a child together.

How does family law in Ontario affect common-law couples?

Names

You can call yourself by any name you choose, as long as you do not do it in order to break the law. You are free to take your spouse's surname, or to

use a combination of both your names. You can do this informally simply by using the name. This will be accepted for many purposes. Or you can make the name official by filing a form called a “Joint Declaration of Conjugal Relationship” with the Registrar General. For more information or to get this form, call **1-800-461-2156**. In Toronto call **416-325-8305**. You can continue to use the name even if the relationship ends. This is no different than it would be if you were married.

If you and your common-law spouse have different surnames, and you have a child together, you can give your child either surname, or a combination of both.

If you have a child from a previous relationship, you can apply to change the child’s surname to that of your present spouse, or to a combination of both your surnames. In some situations, the consent of the child’s other parent might be required. The forms for changing a child’s name are also available from the Registrar General. See the contact information above.

Birth Registration

When the birth of a child is registered in Ontario, the birth mother’s name must be given but the other parent’s name might or might not be given.

If you have a child in an opposite-sex common-law relationship, make sure that both parents' names are on your child's birth registration. This is to acknowledge parentage and protect both your child's rights and your rights as parents.

The situation can be more complicated for same-sex couples. Two women in a spousal relationship can be registered as the parents if the child was conceived using an anonymous sperm donor. In other cases, there are two ways for a parent who is not named on the birth registration to be legally recognized as a parent. He or she can either adopt the child or get a "declaration of parentage" from a court. The law in this area is still developing. It is a good idea to consult a lawyer if this is your situation. You may be able to find more information at www.lgbtqparentingconnection.ca.

If you are not the birth parent and you do not legally adopt your common-law spouse's child or get a declaration of parentage, you might still have an obligation to pay child support, and you might still get custody or access rights if you and your spouse separate. But you will have no other legally recognized relationship with your child. For more information about what this can mean, see the section under "Children" starting on [page 15](#).

Child Support

Parents have a legal responsibility to support their child at least until the child turns 18 years of age. Sometimes it can be longer if the child continues to be dependent. Parents have this responsibility whether or not they are married and whether or not they live together.

If you treat your common-law spouse's child as a member of your own family, you might have a legal responsibility to support the child if you and your spouse separate. This can be the case even if the child has another parent who also provides support.

The Child Support Guidelines are a set of rules and charts for calculating the amount of support that should be paid. The amount of support depends on the paying parent's income, the number of children to be supported, and other factors. The Guidelines can help parents who are separating to reach an agreement about child support. If parents cannot agree and have to go to court to get a judge's decision, the judge will apply the Guidelines.

“Child Support and the Child Support Guidelines” is another publication produced by CLEO. See the [back cover](#) of this booklet for ordering information.

Custody and Access

Parents who live together share custody of their children. If they separate, they can agree on custody arrangements. If they cannot agree, the court will make a decision about custody and access based solely on what arrangement is in each child's best interests. Any parent who does not have custody usually has the right to spend time with his or her child. This right does not depend on the marital status of the parents or on the payment of child support.

“Custody and Access” is another publication produced by CLEO. See the [back cover](#) of this booklet for ordering information.

Adoption

A couple in a common-law relationship can adopt a child together. One spouse can also adopt the child of the other spouse, as long as the child's other parent or parents give their consent or the court says their consent is not necessary. The law is the same whether the couple is married or not.

Property

Some people think that by living together as a couple they have a legal right to claim a share

of each other's property. This is not true. Only legally married couples automatically share the value of their property when they separate.

Living in a common-law relationship does not automatically give you a right to a share of your spouse's property.

In a common-law relationship, the property that you bring into the relationship normally continues to belong to you alone. If you and your spouse separate, there is no automatic right to divide it or share its value. Anything you buy for yourself with your own money during the relationship and hold in your name usually belongs only to you. But things that you and your spouse buy *together* during the relationship belong to you jointly. If you separate, these things, or their value, will be divided.

If there is any disagreement about who owns something, you may have to go to court to have a judge decide. You should keep receipts, registrations, and other proof of ownership in case they are needed.

The general rule is that each common-law spouse owns what he or she brings into the relationship with two exceptions:

- contributions, and
- written agreements.

Contributions

Sometimes a common-law spouse contributes money, time, or work that helps the other spouse buy, maintain, or improve their property.

In situations like these, if the spouse who owns the property does not agree to compensate the other spouse, the other spouse will probably have to go to court to prove their contribution. The court may decide the other spouse has a right to a share in the property. In any of these situations, it is the contribution, not the relationship, that entitles the other spouse to a share.

Written agreements

If you and your common-law spouse want to make other arrangements for sharing or dividing your property, you can sign a cohabitation agreement. In the agreement, you can clearly say how you intend to arrange your finances during your relationship and how you want to deal with your property and debts if you separate (see [pages 13 and 14](#) for more information about cohabitation agreements).

When two people share their lives, their property often becomes intermixed. If the relationship ends, disagreements can arise about what each person should get. A written agreement can make it much easier to settle the dispute.

Family Home

Married spouses who separate have equal rights to stay in the family home until it is sold, even if the legal title to the property is in only one of their names. Common-law spouses do not automatically have this right. And if the family home is in their common-law spouse's name, they are not protected from their spouse selling or mortgaging the home without their written permission.

Canada Pension Plan Credits

The Canada Pension Plan (CPP) is a federal benefit plan for workers. Most workers and their employers make regular CPP contributions so that when the worker retires, or can no longer work because of disability, they can get a pension. The amount of this pension depends on the size of the contributions.

When couples separate, the pension credits that each of them earned while they were a couple can

be added together and then divided evenly between them. This is true for common-law spouses as well as married couples. If you earned less than your spouse, this may help you qualify for a pension. Or, it may increase the amount of your pension if you already qualify. To get a division of pension credits from a common-law relationship, the following three things must *all* be true:

- you lived with your spouse for at least one year,
- you have been separated for at least one year, or your spouse died less than one year after you separated, and
- you applied within four years after separating.

“CPP Benefits: Are you entitled? Separated? Divorced?” is another publication produced by CLEO. See the back cover of this booklet for ordering information.

Debts

In a common-law relationship, most debts are treated the same way that property is. Unless you have a cohabitation agreement setting out who is responsible for which debts, each spouse is responsible for repaying only his or her own debts (see [pages 13 and 14](#) for more information about cohabitation agreements).

But if you both sign a loan agreement, you are both responsible. Either one of you can be held responsible for repaying the entire debt. Even if one spouse does not benefit from what the loan paid for, they might have to repay the entire loan if the other spouse is unavailable or unable to pay.

Spousal Support

In Ontario, common-law spouses have support rights and responsibilities similar to married couples. The legal responsibility to support your spouse does not begin as soon as you start living together as a couple.

It applies only to couples who:

- are married to each other, or
- have lived together continuously for at least three years, or
- are in a relationship of “some permanence” and have had a child or adopted a child together.

This responsibility may go on after the relationship is over if one spouse needs support and the other is able to provide it.

Many factors affect whether a court will order one spouse to support the other after the end of the relationship, and for how long. Some of these factors are:

- how long the spouses lived together,
- whether one spouse was financially disadvantaged by the relationship,
- the ability of each spouse to be financially self-sufficient, and
- whether either spouse has other dependants.

Cohabitation Agreements

A cohabitation agreement is a contract that lets common-law spouses make legally binding decisions about their relationships. The agreement can describe how you want to arrange your finances and other aspects of your life together. It can also say how your property will be divided and what support will be paid if you separate.

The agreement cannot determine who will get custody of your children if the relationship ends. This can be decided only when the relationship is over.

Before making the agreement, you should each consult a separate lawyer. Each of you should also make a detailed and complete statement of your financial situation.

To make the agreement legally enforceable, both of you must sign it in front of a witness who must also sign it.

What happens if a common-law spouse dies?

Inheritance

People in common-law relationships have no right to inherit any of their spouse's property unless it has been specifically left to them in a will. If your spouse dies without having made a will, their property will go to their relatives. It is very important for each of you to make a will if you are in a common-law relationship.

The instructions you leave in your will make it clear what you want done with your property when you die. They override most of the legal rules that say who inherits when there is no will.

But there is one exception. When you die, if you have a legal obligation to support a child, a former spouse, or other dependants, your will must leave

enough to take care of them. If it does not, they can go to court and ask for the will to be changed to provide support for them.

Even without a will, a surviving common-law spouse usually has a right to any money or property held jointly. If you survive your spouse, you usually have the right to all the money in any joint bank account. You will also become the sole owner of any real estate that the two of you held in “joint tenancy”. Joint tenancy means you both own the property equally, and if one of you dies, the other owns the entire property. If this is what you want, be sure the title to the property says it is held in joint tenancy. Otherwise, your share of the property will go into your estate and your spouse will not automatically be entitled to it unless that is stated in your will.

Children

The inheritance rights of children are not affected by the marital status of their parents. If a parent dies without a will, all of their children automatically get a share of their estate.

But if you are not the child’s birth parent or adoptive parent, and do not have a declaration of parentage from a court, the inheritance law does not consider the child to be yours. The child will

not inherit anything from you unless you have named him or her in your will. This is true even if you have always acted as a parent to the child.

Also, if you are not the birth parent, adoptive parent, or declared parent of your spouse's child, you have no automatic right to have the child live with you if your spouse dies, even if you and the child have always lived together as parent and child. You must go to court to apply for custody and guardianship. If your spouse named you as custodian and guardian in their will, you are more likely to succeed in court. This kind of provision in a will is valid for only 90 days after death. If you apply within the 90 days, it continues to be valid until the court makes an order.

CPP Survivor's Pension

If your common-law spouse contributed to the Canada Pension Plan (CPP), you might be entitled to a monthly survivor's benefit. In order to qualify, you must:

- have been living with your common-law spouse for at least one year at the time of his or her death, and
- be at least 35 years of age (you can be younger if you have a disability or have dependent children living with you).

“CPP Benefits: Are you entitled? Survivor’s Benefits” is another publication produced by CLEO. It has more information about the benefits mentioned in this section and the following two sections. See the [back cover](#) of this booklet for ordering information.

To apply for any CPP benefit, call Service Canada at **1-800-277-9914** for an application kit. You can also download the kit from the “Families and Children” section of their web site at [<www.servicecanada.gc.ca>](http://www.servicecanada.gc.ca).

CPP Children's Benefit

Children of a CPP contributor who has died can receive a monthly benefit. So can any other dependent child who was in the care and custody of the contributor.

CPP Funeral and Death Expenses

CPP also offers a one-time lump sum “Death Benefit” to help pay funeral and other expenses connected to a contributor’s death. It goes to the person or people who pay those expenses. This could be the person who administers the estate of the contributor, or the surviving spouse, or next of kin.

Compensation Benefits

Under Ontario law, you may also be entitled to other payments upon the death of your spouse, depending on the cause of death. If your spouse was killed on the job, you can apply for workers' compensation benefits. If they died as a result of someone else's criminal act, you can apply for criminal injuries compensation. Each of these types of compensation has different rules about who can qualify.

To find out more about workers' compensation benefits, contact the Workplace Safety and Insurance Board (WSIB) at **1-800-387-0750**. In Toronto call **416-344-1000**. Or you can visit their web site at <www.wsib.on.ca>.

To contact the Criminal Injuries Compensation Board (CICB) call **1-800-372-7463**. In Toronto call **416-326-2900**. Or you can visit their web site at <www.cicb.gov.on.ca>.

For more information and help contact your community legal clinic. To find the community legal clinic nearest you, look under "Legal Aid" or "Lawyers" in your phone book, or call:

| | |
|---------------|-----------------------|
| Toll-free | 1-800-668-8258 |
| Toll-free TTY | 1-866-641-8867 |

Toronto area

416-979-1446

Toronto area TTY

416-598-8867

You can also visit <www.legalaid.on.ca>.

Life Insurance

One way of making sure that your spouse will be provided for after you die is to specifically name them as a beneficiary in your life insurance policy. You can name anyone you choose as a beneficiary of your policy. Be sure to use his or her full name, not just “husband”, “wife”, or “spouse”.

What other legal rights and responsibilities do common-law spouses have?

Taxes

Federal income tax rules that apply to married couples also apply to common-law couples who have been living together for at least one year. For example, if you pay taxes you can claim a spousal amount if your spouse’s income is low enough. It also means that if you earn more than your spouse, you can take a deduction for contributing to his or her RRSP. But being treated the same as married couples for tax

purposes is not always to your benefit. For example, if you are your child's primary caregiver and you apply for a Canada Child Tax Benefit, the government will take your spouse's income into consideration when deciding eligibility.

Parental Leave and Benefits

If you and your common-law spouse have a baby or adopt a child, you can get the same parental leave and the same Employment Insurance (EI) benefits as you would if you were married.

“Taking time off work: Pregnancy and Parental Leaves and Benefits” is another publication produced by CLEO. See the [back cover](#) of this booklet for ordering information.

Pension Benefits

Federal pension programs recognize common-law spouses who have lived together for at least one year. For example, common-law spouses who qualify can receive the Guaranteed Income Supplement (GIS) as a couple. And someone who is 60 to 64 years old might be eligible for a monthly allowance if their common-law spouse is eligible for an Old Age Security (OAS) pension.

Immigration Sponsorship

Under the Immigration and Refugee Protection Act, Canadian citizens and permanent residents who are at least 18 years of age may be able to sponsor their married spouse or “common-law” or “conjugal” partner as a member of the family class.

In this law, a conjugal partner is someone who is outside of Canada and with whom you have had a conjugal relationship for at least one year. A common-law partner is someone you have lived with in a conjugal relationship for at least one year. If you and your partner could not live together because of persecution or punishment in another country, you can still be considered common-law partners. Your spouse or partner can be of the same sex or the opposite sex, and must be at least 16 years of age.

Most family class members must be sponsored from outside Canada, but a married spouse or common-law partner can sometimes be sponsored from inside Canada.

In certain situations, sponsorship applications will not be approved. For example, if you are on social assistance for a reason other than disability, or if you are in default of court-ordered support

payments, you will not be allowed to sponsor someone. In most cases, you can appeal the refusal of a sponsorship application.

If you are sponsoring your married spouse, common-law or conjugal partner, or adopted child, you must show that the relationship is genuine and that you did not enter into it for immigration purposes.

If you did not list your married spouse, common-law or conjugal partner, or dependent child on your own application for permanent residence, you will *not likely* be able to sponsor them later. If this is your situation, you need to get legal advice. *Your own status in Canada could be at risk.*

“Sponsoring a member of the family class” is another publication produced by CLEO. See the [back cover](#) of this booklet for ordering information.

Refugee claims

It is also possible for someone who fears persecution in their country of origin because of their sexual orientation to make a claim for refugee protection. It is a good idea to get legal advice if you are making a refugee claim.

“Making a refugee claim” is another publication produced by CLEO. See the back cover of this booklet for ordering information.

For advice about immigration options, or help with an application or an appeal, contact a community legal clinic or a lawyer. See [pages 18 and 19](#) of this booklet for information about how to find the community legal clinic nearest you.

Conclusion

The law has been changing dramatically in recent years in relation to people in common-law relationships. They now have many of the same rights and benefits as married couples, and many of the same responsibilities.

If you are not sure if a right, benefit, or responsibility applies to you because you are not married, get legal advice.

This publication contains general information only. It is not a substitute for getting legal advice about your particular situation.

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