

Property division: Common-law couples

When you and your partner separate, or when your partner dies, the way property is divided depends on whether you were married or in a common-law relationship.

Couples who live together as partners, but have not legally married, are sometimes said to be living “**common-law**”.

To learn about property division for married couples, read **Property division: Married couples**.

What is property?

Property is everything you own, for example, your:

- home and other real estate
- car and other vehicles
- personal items, such as clothing, jewellery, and artwork
- household items, such as furniture, appliances, and electronic equipment
- financial assets, such as bank accounts, RRSPs, investments, insurance policies, and pensions
- businesses

How to divide property if you separate

When a common-law couple separates, there is **no** right to share in the value of property bought during the relationship.

Anything you bought for yourself with your money during the relationship and own in your name usually belongs only to you.

Things that you and your partner bought together during the relationship belong to you both jointly. If you separate, only the things you own jointly are divided or their value is shared.

Unjust enrichment

If you contributed financially or in some other way to your partner's property, you might be able to claim a share of that property. For example, you might have done unpaid work at home so your partner could do paid work, or you might have worked without pay in a family business.

A court can look at whether your partner was "unjustly enriched" at your expense. But this can be hard to prove.

Rule for Canada Pension Plan credits

You can divide Canada Pension Plan credits that were earned while you were living with your partner, if you lived together for at least **one year**.

You must apply through Service Canada within 4 years of separating from your partner, unless both of you agree in writing to remove this time limit. Also, you must wait until you have been separated for at least one year, unless your partner died in that first year after you separated.

Right to stay in the family home

A common-law partner does not automatically have the right to stay in the family home if it is not in their name. If one common-law partner owns the home, they can sell or mortgage it without the other partner's permission.

Debts

Each partner is usually responsible for their own debts, unless there is an agreement that says something else.

But if both partners signed a loan agreement, either partner can be responsible for the entire debt.

Written agreements

If you and your partner want to share your property differently if your relationship ends, you can make a **cohabitation agreement**. This is also called a **domestic contract**.

In the agreement, you can say how you want to arrange your finances during your relationship and how you want to deal with your property and debts if you separate.

You do not need a lawyer to make an agreement. But it is a good idea to get legal advice before signing one. You and your partner cannot get advice from the same lawyer.

If you cannot agree on how to divide property, you can get help from a **family law professional**. These are neutral people who are trained to work with both of you to help you reach an agreement or decide for you. Or, one of you must start a family law court case and ask a judge to decide.

If your partner dies

Common-law partners do **not** inherit any of their partner's property unless it was left to them in a valid will. If your common-law partner dies without leaving a valid will, the **intestacy rules** give their children and others the right to inherit property, not you. So if you are in a common-law relationship, each of you must make a will if you want each other to inherit your property when you die.

Joint property

If your partner dies, you usually become the sole owner of any money or property that you both owned jointly. Joint property is not affected by a will or the intestacy rules.

You also inherit life insurance money and registered investments if those assets list you as a **beneficiary**.

Other benefits

There are some **government benefits** like CPP survivor's pension and CPP funeral and death expenses that you may be able to get if your partner dies.

More information and legal help

Visit stepstojustice.ca/family-law for more information. CLEO also has other family law publications at family.cleo.on.ca.

For help finding a lawyer or a mediator, see the publication **Family Law: Legal Help**. It also has information on where to get help if you cannot afford the fees.

For help filling out family court forms, see CLEO's **Family Law Guided Pathways**.



Visit stepstojustice.ca/family-law for more about family law and legal help. This is general information for people in Ontario, Canada. It is not legal advice.

Cette publication est également disponible en français.

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