



## Common Law Traps by Jodi Wyman

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Many cohabiting couples are shocked when they learn their actual legal rights. Couples who choose to live together but not marry are in a unique legal position. Most believe that after a certain period of time they are the legal equivalent of married in all respects. They are wrong.

The definition of common law partner varies depending upon the legislation in question. For example, the Income Tax Act recognizes common-law partnerships after a couple has lived together for one year or has a child. The Intestate Succession Act does not recognize cohabiting couples all, so if one spouse dies without a will, their estate will not be left to their partner. The Pension Benefits Act definition of a common law couple until recently included the requirement that a partner be publicly represented as the spouse of that person.

Perhaps most surprisingly, when common-law partners separate, there is no legal requirement they divide their assets. The Marital Property Act

does not apply to their union. The courts have allowed one partner to claim an interest in their partner's property under the principles of trust law but only in rare cases. Same sex couples have traditionally had even fewer rights than opposite sex partners.

The provincial government has however been trying to catch up with the times. In August of 2002 Manitoba amended 56 of its Acts to add rights and obligations for opposite and same sex common-law partners. The provincial government also drafted legislation to grant property rights to spouses, but this Act has not been proclaimed as yet and is not currently in effect. Once it is, it will dramatically effect every common-law couple by requiring a sharing of assets even when there was no intention to do so.

Obviously, a Cohabitation Agreement is a wise investment. The agreement can be made at any stage of the relationship. It allows parties to talk about topics such as

ownership of present and future assets, how those assets would be divided, estate matters and support obligations (including those to stepchildren). A written agreement can prevent unwanted results when a couple separates, or one partner dies, as it will generally override most legislation. The individuals can work out the terms of the agreement themselves but to make sure it is legally binding independent legal advice is an absolute requirement Each party must be fully aware of their rights and liabilities.

It is also important every partner has a current will and power of attorney, again to make sure their assets and affairs are handles the way they want. The legislation for common-law partners is full of traps and changing rapidly, and it is important couples have properly outlined their intentions and protected their rights.