



Province of Alberta

# **FAMILY PROPERTY ACT**

Revised Statutes of Alberta 2000  
Chapter F-4.7

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Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Regulations

The following is a list of the regulations made under the *Family Property Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Family Property Act</b>		
Family Property.....	13/99 .....	63/2003, 177/2010, 227/2011, 145/2018, 156/2019

# **FAMILY PROPERTY ACT**

## Chapter F-4.7

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

**1** In this Act,

(a) “adult interdependent partner” means

- (i) an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act*, or
- (ii) a former adult interdependent partner;

(a.1) “Court” means the Court of Queen’s Bench;

(a.2) “family home” means property

- (i) that is owned or leased by one or both spouses or adult interdependent partners,

- (ii) that is or has been occupied by the spouses or adult interdependent partners as their family's home, and
- (iii) that is
  - (A) a house, or part of a house, that is a self-contained dwelling unit,
  - (B) part of business premises used as living accommodation,
  - (C) a mobile home,
  - (D) a residential unit as defined in the *Condominium Property Act*, or
  - (E) a suite;
- (a.3) "family property order" means a distribution by the Court under section 7 and an order under section 9;
- (a.4) "former adult interdependent partner" means a former adult interdependent partner within the meaning of section 1.1;
- (b) "household goods" means personal property
  - (i) that is owned by one or both spouses or adult interdependent partners, and
  - (ii) that was ordinarily used or enjoyed by one or both spouses or adult interdependent partners or one or more of the children residing in the family home, for transportation, household, educational, recreational, social or esthetic purposes;
- (c) and (d) repealed 2018 c18 s2(3);
- (d.1) "relationship of interdependence" means a relationship of interdependence within the meaning of the *Adult Interdependent Relationships Act*;
- (e) "spouse" includes a former spouse and a party to a marriage notwithstanding that the marriage is void or voidable.

RSA 2000 cM-8 s1;2018 c18 s2(3)

**Former adult interdependent partner**

**1.1(1)** For the purposes of this Act, an adult interdependent partner becomes the former adult interdependent partner of another person when the earliest of the following occurs:

- (a) the adult interdependent partners enter into a written agreement that provides evidence that the adult interdependent partners intend to live separate and apart without the possibility of reconciliation;
  - (b) the adult interdependent partners live separate and apart for more than one year and one or both of the adult interdependent partners intend that their relationship as adult interdependent partners not continue;
  - (c) one of the adult interdependent partners marries a third party;
  - (d) in the case of an adult interdependent partner referred to in section 3(1)(a) of the *Adult Interdependent Relationships Act*, the adult interdependent partner enters into an adult interdependent partner agreement referred to in section 7 of that Act that is valid under that Act with a third party;
  - (e) one or both of the adult interdependent partners have obtained a declaration of irreconcilability under section 83 of the *Family Law Act*.
- (2) References to an agreement in subsection (1)(a) and (d) include an agreement that does not comply with the requirements of section 38.
- (3) For the purposes of subsection (1)(b), a period of living separate and apart is not considered interrupted or terminated
- (a) by reason only that either adult interdependent partner has become incapable of forming the intention to live separate and apart, or
  - (b) by reason only that the adult interdependent partners have resumed living together during a single period of not more than 90 days with reconciliation as its primary purpose.
- (4) Adult interdependent partners who marry each other cease to be adult interdependent partners but are not former adult interdependent partners for the purposes of this Act.

2018 c18 s2(4)

**Knowledge of void marriage**

**2** Nothing in this Act confers a right on a spouse who at the time of marriage knew or had reason to believe that the marriage was void.

RSA 1980 cM-9 s2

## Part 1 Family Property

### Application by spouse

**3(1)** A spouse may apply to the Court for a family property order only if

- (a) the habitual residence of both spouses is in Alberta, whether or not the spouses are living together,
- (b) the last joint habitual residence of the spouses was in Alberta, or
- (c) the spouses have not established a joint habitual residence since the time of marriage but the habitual residence of each of them at the time of marriage was in Alberta.

**(2)** Notwithstanding subsection (1), if a statement of claim for divorce is issued under the *Divorce Act* (Canada) in Alberta, the plaintiff or the defendant may apply for a family property order.

RSA 2000 cM-8 s3;2018 c18 s2(6)

### Application by adult interdependent partner

**3.1** An adult interdependent partner may apply to the Court for a family property order only if

- (a) the habitual residence of both adult interdependent partners is in Alberta, whether or not the adult interdependent partners are living together,
- (b) the last joint habitual residence of the adult interdependent partners was in Alberta, or
- (c) the adult interdependent partners have not established a joint habitual residence since becoming adult interdependent partners but the habitual residence of each of them at the time they became adult interdependent partners was in Alberta.

2018 c18 s2(7)

### Form of application

**4** An application for a family property order shall be made by statement of claim.

RSA 2000 cM-8 s4;2018 c18 s2(8)

### Conditions precedent to application — spouses

**5(1)** A family property order in respect of spouses may only be made

- (a) if

- (i) a judgment of divorce has been granted, or
- (ii) a declaration of nullity of marriage has been made  
with respect to the marriage,
- (b) if one of the spouses has been granted a judgment of judicial separation,
- (b.1) if one or both of the spouses have obtained a declaration of irreconcilability under the *Family Law Act*,
- (c) if the Court is satisfied that the spouses have been living separate and apart for a continuous period of at least one year immediately prior to the commencement of the application,
- (d) if the Court is satisfied that the spouses are living separate and apart at the time the application is commenced and the defendant spouse
  - (i) has transferred or intends to transfer substantial property to a third party who is not a bona fide purchaser for value, or
  - (ii) has made or intends to make a substantial gift of property to a third party,  
with the intention of defeating a claim to property a spouse may have under this Part, or
- (e) if the Court is satisfied that the spouses are living separate and apart and one spouse is dissipating property to the detriment of the other spouse.

**(2)** Notwithstanding that a family property order has been made under circumstances to which subsection (1)(b), (b.1), (c), (d) or (e) applies, the Court may make a further family property order under circumstances to which subsection (1)(a) applies with respect to the property of the same spouses if there has been a subsequent resumption of cohabitation by the spouses during a period of more than 90 days with reconciliation as its primary purpose.

**(3)** Spouses may be held to be living separate and apart notwithstanding that they have continued to reside in the same residence or that either spouse has rendered some household service to the other during the period of separation.

**(4)** For the purposes of subsection (1)(c), the period during which spouses have been living separate and apart shall not be considered

to have been interrupted by reason only that there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days with reconciliation as its primary purpose, and that period shall not be included in computing the period during which the spouses are living separate and apart.

RSA 2000 cM-8 s5;2003 cF-4.5 s121;2018 c18 s2(9)

**Conditions precedent to application — adult interdependent partners**

**5.1(1)** A family property order in respect of adult interdependent partners may only be made

- (a) if they have become former adult interdependent partners,
- (b) if the Court is satisfied that the adult interdependent partners are living separate and apart at the time the application is commenced and the defendant adult interdependent partner
  - (i) has transferred or intends to transfer substantial property to a third party who is not a bona fide purchaser for value, or
  - (ii) has made or intends to make a substantial gift of property to a third party,with the intention of defeating a claim to property an adult interdependent partner may have under this Part,

or

- (c) if the Court is satisfied that the adult interdependent partners are living separate and apart and one adult interdependent partner is dissipating property to the detriment of the other adult interdependent partner.

**(2)** Notwithstanding that a family property order has been made under circumstances to which subsection (1)(b) or (c) applies, the Court may make a further family property order under circumstances to which subsection (1)(a) applies with respect to the property of the same adult interdependent partners if there has been a subsequent resumption of cohabitation by the adult interdependent partners during a period of more than 90 days with reconciliation as its primary purpose.

**(3)** Adult interdependent partners may be held to be living separate and apart notwithstanding that they have continued to reside in the same residence or that either adult interdependent partner has rendered some household service to the other during the period of separation.

2018 c18 s2(10)

**Time for application — spouses**

**6(1)** An application for a family property order to which section 5(1)(a), (b) or (b.1) applies

- (a) may, notwithstanding subsection (2), be commenced at or after the date proceedings are commenced for a decree of divorce, a declaration of nullity, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*, but
- (b) may be commenced not later than 2 years after the date of the decree nisi, declaration or judgment.

**(2)** An application for a family property order to which section 5(1)(c) or (e) applies may be commenced within 2 years after the date the spouses separated.

**(3)** An application for a family property order to which section 5(1)(d) applies may be commenced within

- (a) 2 years after the date the spouses separated, or
- (b) one year after the date the property is transferred or given,

whichever occurs first.

**(4)** Any single period of not more than 90 days during which the spouses resumed cohabitation with reconciliation as its primary purpose shall not be included in computing the 2-year period under subsection (2) or (3).

RSA 2000 cM-8 s6;2003 cF-4.5 s121;  
2018 c18 s2(11)

**Time for application — adult interdependent partners**

**6.1(1)** An application for a family property order to which section 5.1(1)(a) or (c) applies may be commenced not later than 2 years after the date the applicant first knew, or in the circumstances ought to have known, that the applicant had become a former adult interdependent partner.

**(2)** An application for a family property order to which section 5.1(1)(b) applies may be commenced not later than

- (a) 2 years after the date the applicant first knew, or in the circumstances ought to have known, that the applicant had become a former adult interdependent partner, or
- (b) one year after the date the property is transferred or given,

whichever occurs first.

2018 c18 s2(12)

### **Distribution of property**

**7(1)** The Court may, in accordance with this section, make a distribution between the spouses or adult interdependent partners of all the property owned by both spouses or adult interdependent partners and by each of them.

**(2)** If the property is

- (a) property acquired by a spouse or adult interdependent partner by gift from a third party,
- (b) property acquired by a spouse or adult interdependent partner by inheritance,
- (c) property acquired by a spouse before the marriage, in the case of spouses who were not in a relationship of interdependence with each other immediately before the marriage,
  - (c.1) property acquired by a spouse before the relationship of interdependence began, in the case of spouses who were in a relationship of interdependence with each other immediately before the marriage,
  - (c.2) property acquired by an adult interdependent partner before the relationship of interdependence began,
- (d) an award or settlement for damages in tort in favour of a spouse or adult interdependent partner, unless the award or settlement is compensation for a loss to both spouses or adult interdependent partners, or
- (e) the proceeds of an insurance policy that is not insurance in respect of property, unless the proceeds are compensation for a loss to both spouses or adult interdependent partners,

the market value of that property on the applicable date under subsection (2.2)(a), (b) or (c) is exempted from a distribution under this section.

**(2.1)** Unless a written agreement by the parties that meets the requirements set out in section 38 provides otherwise, the relevant date for valuation of property to be distributed under this Act is the date of the trial.

**(2.2)** The market value that is exempt under subsection (2) is the market value of the property on the following date, as applicable:

- (a) in the case of spouses who were not in a relationship of interdependence with each other immediately before the marriage,
    - (i) on the date of the marriage, or
    - (ii) on the date the property was acquired by the spouse,  
whichever is later;
  - (b) in the case of spouses who were in a relationship of interdependence with each other immediately before the marriage,
    - (i) on the date the relationship of interdependence began, or
    - (ii) on the date the property was acquired by the spouse,  
whichever is later;
  - (c) in the case of adult interdependent partners,
    - (i) on the date the relationship of interdependence began, or
    - (ii) on the date the property was acquired by the adult interdependent partner,  
whichever is later.
- (3)** The Court shall, after taking the matters in section 8 into consideration, distribute the following in a manner that it considers just and equitable:
- (a) the difference between the exempted value, as determined under subsection (2.2), of property described in subsection (2), referred to in this subsection as the “original property”, and the market value at the time of the trial of the original property or property acquired
    - (i) as a result of an exchange for the original property, or
    - (ii) from the proceeds, whether direct or indirect, of a disposition of the original property;
  - (b) in the case of spouses who were not in a relationship of interdependence with each other immediately before the marriage, property acquired by a spouse with income received during the marriage from the original property or property acquired in a manner described in clause (a)(i) or (ii);

- (b.1) in the case of spouses who were in a relationship of interdependence with each other immediately before the marriage, property acquired by a spouse with income received during the relationship of interdependence or the marriage from the original property or property acquired in a manner described in clause (a)(i) or (ii);
  - (b.2) in the case of adult interdependent partners, property acquired by an adult interdependent partner with income received, at any time on or after the date the relationship of interdependence began, from the original property or property acquired in a manner described in clause (a)(i) or (ii);
  - (c) in the case of spouses, property acquired by a spouse after a decree nisi of divorce, a declaration of nullity of marriage, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act* is made in respect of the spouses;
  - (c.1) in the case of adult interdependent partners, property acquired by an adult interdependent partner after becoming a former adult interdependent partner;
  - (d) property acquired by a spouse by gift from the other spouse, including property acquired by a spouse by gift from the other spouse during any period in which they were in a relationship of interdependence with each other immediately before the marriage;
  - (d.1) property acquired by an adult interdependent partner by gift from the other adult interdependent partner at any time on or after the date on which the relationship of interdependence began.
- (4) If the property being distributed is property acquired by a spouse during the marriage or during a relationship of interdependence with the other spouse immediately before the marriage and is not property referred to in subsections (2) and (3), the Court shall distribute that property equally between the spouses unless it appears to the Court that it would not be just and equitable to do so, taking into consideration the matters in section 8.
- (5) In the case of adult interdependent partners, if the property being distributed is property acquired at any time after the relationship of interdependence began and is not property referred to in subsections (2) and (3), the Court shall distribute that property equally between the adult interdependent partners unless it appears

to the Court that it would not be just and equitable to do so, taking into consideration the matters in section 8.

**(6)** Nothing in this Act enables

- (a) a transfer from a pension plan of a benefit under the plan,
- (b) a payout of contributions to a pension plan, or
- (c) a transfer of money in a retirement account

where requirements in legislation applicable to the pension plan or retirement account have not been met, or to a person who is not eligible to receive a share of the benefit, contributions or retirement account under legislation applicable to the pension plan or retirement account, but the Court shall distribute the value of the benefit, contributions or retirement account in accordance with this Act when making a family property order.

**(7)** In subsection (6),

- (a) “pension plan” means a plan, scheme or arrangement organized and administered to provide a series of periodic payments to members of the plan on retirement;
- (b) “retirement account” includes a locked-in retirement account or a life income fund as defined in the *Employment Pension Plans Act* and any similar locked-in account intended to provide income to the owner on retirement.

RSA 2000 cM-8 s7;2003 cF-4.5 s121;  
2018 c18 s2(13)

**Matters to be considered**

**8** The matters to be taken into consideration in making a distribution under section 7 are the following:

- (a) in the case of spouses, the contribution made by each spouse to the marriage, to any relationship of interdependence with the other spouse immediately before the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (a.1) in the case of adult interdependent partners, the contribution made by each adult interdependent partner to the relationship of interdependence and to the welfare of the family, including any contribution made as a homemaker or parent;
- (b) the contribution, whether financial or in some other form, made by a spouse or adult interdependent partner directly or

indirectly to the acquisition, conservation, improvement, operation or management of a business, farm, enterprise or undertaking owned or operated by one or both spouses or adult interdependent partners or by one or both spouses or adult interdependent partners and any other person;

- (c) the contribution, whether financial or in some other form, made directly or indirectly by or on behalf of a spouse or adult interdependent partner to the acquisition, conservation or improvement of the property;
- (c.1) in the case of spouses who were in a relationship of interdependence with each other immediately before the marriage, any contribution referred to in clause (b) or (c) that was made during the relationship of interdependence;
- (c.2) in the case of adult interdependent partners, any contribution referred to in clause (b) or (c) that was made during the relationship of interdependence;
- (d) in the case of spouses, the income, earning capacity, liabilities, obligations, property and other financial resources
  - (i) that each spouse had at the time of marriage, or if the spouses were in a relationship of interdependence with each other immediately before the marriage, that each spouse had on the date the relationship of interdependence began, and
  - (ii) that each spouse has at the time of the trial;
- (d.1) in the case of adult interdependent partners, the income, earning capacity, liabilities, obligations, property and other financial resources
  - (i) that each adult interdependent partner had on the date the relationship of interdependence began, and
  - (ii) that each adult interdependent partner has at the time of the trial;
- (e) in the case of spouses,
  - (i) if the spouses were in a relationship of interdependence with each other immediately before the marriage, the combined duration of the marriage and the relationship of interdependence, or

- (ii) if subclause (i) does not apply, the duration of the marriage;
- (e.1) in the case of adult interdependent partners, the duration of the relationship of interdependence;
- (f) whether the property was acquired when the spouses or adult interdependent partners were living separate and apart;
- (g) the terms of an oral or written agreement between the spouses or adult interdependent partners;
- (h) that a spouse or adult interdependent partner has made
  - (i) a substantial gift of property to a third party, or
  - (ii) a transfer of property to a third party other than a bona fide purchaser for value;
- (i) a previous distribution of property between the spouses or adult interdependent partners by gift, agreement or family property order;
- (j) a prior order made by a court;
- (k) a tax liability that may be incurred by a spouse or adult interdependent partner as a result of the transfer or sale of property;
- (l) that a spouse or adult interdependent partner has dissipated property to the detriment of the other spouse or adult interdependent partner;
- (m) any fact or circumstance that is relevant.

RSA 2000 cM-8 s8;2018 c18 s2(14)

**Power of the Court**

**9(1)** If part of the property of the spouses or adult interdependent partners is situated in Alberta and part elsewhere, the Court may distribute the property situated in Alberta in such a way as to give effect to the distribution under section 7 of all the property wherever it is situated.

**(2)** The Court, in order to effect a distribution under section 7, may do any one or more of the following:

- (a) order a spouse or adult interdependent partner to pay money or transfer an interest in property to the other spouse or adult interdependent partner;

- (b) order that property be sold and that the proceeds be divided between the spouses or adult interdependent partners as the Court directs;
- (c) by order declare that a spouse or adult interdependent partner has an interest in property notwithstanding that the spouse or adult interdependent partner in whose favour the order is made has no legal or equitable interest in the property.

**(3)** To give effect to an order under this section the Court may do any one or more of the following:

- (a) order a spouse or adult interdependent partner to pay money over a period of time with or without interest;
- (b) order a spouse or adult interdependent partner to give security for all or part of any payment;
- (c) charge property with all or part of a payment to be made under the order and provide for the enforcement of that charge;
- (d) prescribe the terms and conditions of a sale ordered under subsection (2);
- (e) require a spouse or adult interdependent partner, as a condition of an order, to surrender all claims to property in the name of the other spouse or adult interdependent partner;
- (f) require a spouse, as a condition of an order, to execute a release of dower rights under the *Dower Act* with respect to all or any property owned by the other spouse or transferred to the other spouse;
- (g) impose a trust in favour of a spouse or adult interdependent partner with respect to an interest in property;
- (h) vary the terms of an order made under subsection (2) in accordance with this subsection;
- (i) if property is owned by spouses or adult interdependent partners as joint tenants, sever the joint tenancy;
- (j) make any other order that in the opinion of the Court is necessary.

RSA 2000 cM-8 s9;2018 c18 s2(15)

**Return of gift or property when insufficient consideration**

**10(1)** When an application has been made for a family property order and the Court is satisfied that

- (a) a spouse or adult interdependent partner has
  - (i) transferred property to a person who is not a bona fide purchaser for value, or
  - (ii) made a substantial gift of property,
- (b) the spouse or adult interdependent partner making the transfer or gift did so with the intention of defeating a claim that the other spouse or adult interdependent partner may have under this Part,
- (c) the transferee or donee accepted the transfer or gift when the transferee or donee knew or ought to have known that the transfer or gift was made with the intention of defeating a claim a spouse or adult interdependent partner may have under this Part, and
- (d) the transfer or gift was made not more than one year before the date on which either spouse or adult interdependent partner commenced the application for the family property order,

the Court may do any one or more of the things referred to in subsection (2).

**(2)** If subsection (1) applies, the Court may do any one or more of the following:

- (a) order the transferee or donee to pay or transfer all or part of the property to a spouse;
- (b) give judgment in favour of a spouse against the transferee or donee for a sum not exceeding the amount by which the share of that spouse under the matrimonial property order is reduced as a result of the transfer or gift;
- (c) consider the property transferred or the gift made to be part of the share of the spouse who transferred the property or made the gift, when the Court makes a matrimonial property order.

**(3)** For the purposes of this section, the value of the property transferred or the gift shall be the market value at the time of the trial.

(4) If a spouse applies for an order under subsection (1), the applicant shall serve the transferee or donee with notice of the application and shall include the allegations made and the nature of the claim of the applicant as it affects the transferee or donee.

(5) A transferee or donee who is served with notice under this section is deemed to be a party to the application for the matrimonial property order as a defendant with respect to any allegation or claim that affects the transferee or donee.

RSA 2000 cM-8 s10;2018 c18 s2(16)

**Application by spouse or adult interdependent partner of deceased**

**11(1)** Subject to this section, an application for a family property order may be made or continued by the surviving spouse or surviving adult interdependent partner, as the case may be, after the death of the other spouse or adult interdependent partner.

(2) A family property order may be made on the application of a surviving spouse or surviving adult interdependent partner only if an application for a family property order could have been commenced immediately before the death of the other spouse or adult interdependent partner.

(3) When a family property order is made in favour of a surviving spouse or surviving adult interdependent partner, the Court, in addition to the matters in section 8, shall take into consideration any benefit received by the surviving spouse or surviving adult interdependent partner as a result of the death of the deceased spouse or deceased adult interdependent partner.

(4) An application by a surviving spouse or surviving adult interdependent partner for a family property order may not be commenced more than 6 months after the date of issue of a grant of probate or administration of the estate of the deceased spouse or deceased adult interdependent partner.

RSA 2000 cM-8 s11;2018 c18 s2(17)

**Suspension of administration of deceased's estate**

**12** The Court may make an order suspending in whole or in part the administration of the estate of the deceased spouse or deceased adult interdependent partner until an application for a family property order has been determined.

RSA 2000 cM-8 s12;2018 c18 s2(17)

**Consent to distribution of estate**

**13(1)** Until the expiration of 6 months from the date of issue of the grant of probate or administration of the estate of a deceased spouse or deceased adult interdependent partner, the executor,

administrator or trustee shall not distribute any portion of the estate to a beneficiary without the consent of the living spouse or living adult interdependent partner, as the case may be, or an order of the Court.

**(2)** If

- (a) an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), and
- (b) the Court makes a family property order with respect to property in the estate of the deceased spouse or deceased adult interdependent partner,

the executor, administrator or trustee is personally liable to the living spouse or living adult interdependent partner for any loss to that spouse or adult interdependent partner as a result of the distribution.

RSA 2000 cM-8 s13;2018 c18 s2(17)

**Distribution in accordance with Court order**

**14(1)** If an application for a family property order is made or continued by a spouse or adult interdependent partner, the executor, administrator or trustee of the deceased spouse or deceased adult interdependent partner shall hold the estate subject to any family property order that may be made, and the executor, administrator or trustee shall not proceed with the distribution of the estate other than in accordance with the family property order.

**(2)** If an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), the executor, administrator or trustee is personally liable to the living spouse or living adult interdependent partner, as the case may be, for any loss to that spouse or adult interdependent partner as a result of the distribution.

RSA 2000 cM-8 s14;2018 c18 s2(17)

**Property deemed never part of estate**

**15** Money paid to a living spouse or living adult interdependent partner or property transferred to a living spouse or living adult interdependent partner under a family property order is deemed never to have been part of the estate of the deceased spouse or deceased adult interdependent partner with respect to a claim against the estate

- (a) by a beneficiary under a will,
- (b) by a beneficiary under Part 3 of the *Wills and Succession Act*, or

- (c) by a family member under Division 2 of Part 5 of the *Wills and Succession Act*.

RSA 2000 cM-8 s15;2002 cA-4.5 s54;2018 c18 s2(18);  
2021 c16 s5

#### **Actions continued by estate**

**16** Where a person dies after commencing an action under this Part,

- (a) the action may be continued by the estate of the deceased person, and
- (b) the rights conferred on that person under this Part prior to that person's death survive that person's death for the benefit of that person's estate.

RSA 1980 cM-9 s16;1991 c21 s24

#### **Question re other cause**

**17(1)** If a question respecting property arises

- (a) between spouses in any other matrimonial cause, or
- (b) between adult interdependent partners in any cause arising from or relating to their relationship as adult interdependent partners,

the Court may decide the question as if it had been raised in proceedings under this Part.

**(2)** If in an application under this Part it appears to the Court that it is necessary or desirable to have other matters determined first or at the same time, the Court may direct that the application be adjourned until those matters are determined or brought before the Court.

RSA 2000 cM-8 s17;2018 c18 s2(19)

#### **Rights under Wills and Succession Act unaffected**

**18(1)** Nothing in this Act affects the right of a surviving spouse to make an application under Division 2 of Part 5 of the *Wills and Succession Act*.

**(2)** An application referred to in subsection (1) that is made by a surviving spouse may be joined with an application under this Part.

RSA 2000 cM-8 s18;2002 cA-4.5 s54;2021 c16 s5

## Part 2 Family Home Possession

### Grant of exclusive possession of home

**19(1)** The Court, on application by a spouse or adult interdependent partner, may by order do any one or more of the following:

- (a) direct that a spouse or adult interdependent partner be given exclusive possession of the family home;
- (b) direct that a spouse or adult interdependent partner be evicted from the family home;
- (c) restrain a spouse or adult interdependent partner from entering or attending at or near the family home.

**(2)** In addition to making an order under subsection (1), the Court may, by order, give a spouse or adult interdependent partner possession of as much of the property surrounding the family home as is necessary, in the opinion of the Court, for the use and enjoyment of the family home.

**(3)** An order under this section may be made subject to any conditions and for any time that the Court considers necessary.

**(4)** An order under this section may be varied by the Court on application by a spouse or adult interdependent partner.

**(5)** An order under this section does not create a subdivision within the meaning of Part 17 of the *Municipal Government Act*.

RSA 2000 cM-8 s19;2018 c18 s2(21)

### Matters to be considered

**20** In exercising its powers under this Part, the Court shall have regard to

- (a) the availability of other accommodation within the means of both the spouses or adult interdependent partners,
- (b) the needs of any children residing in the family home,
- (c) the financial position of each of the spouses or adult interdependent partners, and
- (d) any order made by a court with respect to the property or the support or maintenance of one or both of the spouses or adult interdependent partners.

RSA 2000 cM-8 s20;2003 cF-4.5 s121;2018 c18 s2(22)

**Precedence of order**

**21** An order made under this Part takes effect notwithstanding an order under Part 1 or a subsequent order for the partition and sale of the family home.

RSA 2000 cM-8 s21;2018 c18 s2(23)

**Registration of order for possession**

**22(1)** If an order is made under section 19 with respect to a family home and the family home or part of it is real property that

- (a) is owned by one or both of the spouses or adult interdependent partners,
- (b) is leased by one or both of the spouses or adult interdependent partners for a term of more than 3 years, or
- (c) is the subject of a life estate in favour of one or both of the spouses or adult interdependent partners,

the order may be registered with the Registrar of Land Titles.

**(2)** An order registered under this section binds the estate or interest of every description that the spouse or spouses or the adult interdependent partner or partners have in the property to the extent stipulated in the order.

**(3)** A spouse or adult interdependent partner against whose estate or interest an order is registered under this section may only dispose of or encumber that spouse's or adult interdependent partner's estate or interest with the consent in writing of the spouse or adult interdependent partner in possession or under an order of the Court.

RSA 2000 cM-8 s22;2018 c18 s2(24)

**Registration of financing statement re mobile home**

**23** If the Court makes an order under section 19 and the family home is a mobile home owned or leased by one or both of the spouses or adult interdependent partners, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

RSA 2000 cM-8 s23;2018 c18 s2(25)

**Spouse or adult interdependent partner as tenant**

**24** If a family home is leased by one or both of the spouses or adult interdependent partners under an oral or written lease and the Court makes an order giving possession of the family home to one spouse or adult interdependent partner, that spouse or adult interdependent partner is deemed to be the tenant for the purposes of the lease.

RSA 2000 cM-8 s24;2018 c18 s2(26)

**Exclusive use of household goods**

**25(1)** The Court, on application by a spouse or adult interdependent partner, may by order direct that a spouse or adult interdependent partner be given the exclusive use and enjoyment of any or all of the household goods.

**(2)** An order under subsection (1) may be made subject to any conditions and for any time that the Court considers necessary.

**(3)** An order made under this section may be varied by the Court on application by a spouse or adult interdependent partner.

RSA 2000 cM-8 s25;2018 c18 s2(27)

**Registration of financing statement re household goods**

**26** If the Court makes an order with respect to household goods under section 25, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

RSA 1980 cM-9 s26;1983 cC-7.1 s25;1988 cP-4.05 s89

**Effect of registration**

**27(1)** If a financing statement is registered under section 23 or 26, the financing statement

- (a) is notice of the interests of the spouses or adult interdependent partners in the property described in the financing statement during the time that the registration is effective, and
- (b) takes effect, as against subsequent creditors, purchasers and mortgagees, only from the date of registration of the financing statement.

**(2)** A spouse or adult interdependent partner against whose interest in property a financing statement is registered under section 23 or 26 may only dispose of or encumber that interest with the consent in writing of the spouse or adult interdependent partner in possession or under an order of the Court.

RSA 2000 cM-8 s27;2018 c18 s2(28)

**Rights additional to rights under Dower Act**

**28(1)** The rights under this Part are in addition to and not in substitution for or derogation of the rights of a spouse under the *Dower Act*.

**(2)** If a spouse is in possession of a family home and a life estate in the family home vests in that spouse pursuant to the *Dower Act*, the registration of an order under this Part may be cancelled by the Registrar of Land Titles on application by that spouse.

RSA 2000 cM-8 s28;2018 c18 s2(29)

**Cancellation of registration of order**

**29(1)** The person against whose property an order is registered under section 22 may apply to the Court for an order directing the Registrar of Land Titles to cancel the registration.

**(2)** The person against whose property an order is registered under section 23 or 26 may apply to the Court for an order cancelling the registration.

**(3)** The Court may make an order under this section on any conditions the Court considers necessary.

RSA 1980 cM-9 s29

**Methods of making application**

**30(1)** An application under this Part

- (a) may be joined with, or heard at the same time as,
  - (i) a matrimonial cause between the spouses, or
  - (ii) any cause between adult interdependent partners arising from or relating to their relationship as adult interdependent partners,

or

- (b) may be made as an application in an action or proceeding between the spouses or adult interdependent partners under the *Family Law Act* or Part 1 of this Act.

**(2)** An order may be made under this Part on an ex parte application if the Court is satisfied that there is a danger of injury to the applicant spouse or applicant adult interdependent partner or to a child residing in the family home as a result of the conduct of the respondent spouse or respondent adult interdependent partner.

**(3)** If an application is made ex parte, the Court may dispense with service of notice of the application or direct that the application be served at a time and in a manner that it sees fit.

RSA 2000 cM-8 s30;2003 cF-4.5 s121;  
2009 c53 s109;2018 c18 s2(30)

### **Part 3 General**

#### **Disclosure of property by spouses or adult interdependent partners**

**31(1)** If an application has been commenced under Part 1, each spouse or adult interdependent partner shall

- (a) file with the Court a statement, verified by oath, disclosing particulars of all the property of that spouse or adult interdependent partner, whether the property is situated in Alberta or elsewhere, and
- (b) serve the statement on the other spouse or adult interdependent partner.

**(2)** A statement made under subsection (1) shall include particulars of property disposed of by that spouse or adult interdependent partner within one year before the application was commenced.

**(3)** A statement made under subsection (1) shall

- (a) be in the form, and
- (b) contain the information,

prescribed by the regulations.

RSA 2000 cM-8 s31;2018 c18 s2(31)

#### **Regulations**

**32** The Lieutenant Governor in Council may make regulations

- (a) as to the procedure to be followed and the forms to be used under this Act;
- (b) prescribing the time within which documents are to be filed and served under this Act;
- (b.1) requiring notice to be given to any person in respect of any matter under this Act and respecting the manner in which and the time within which the notice is to be given;

- (c) prescribing the information to be contained in a statement made under section 31.
- (d) defining, for the purposes of this Act and the regulations, any term or expression used but not defined in this Act;
- (e) respecting the transitional application of any amendment made to this Act by the *Family Statutes Amendment Act, 2018*, including the interpretation of any provision amended;
- (f) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act of anything under this Act as it read before being amended by the *Family Statutes Amendment Act, 2018*, including the interpretation or application of any transitional provision in this Act.

RSA 2000 cM-8 s32;2018 c18 s2(32)

#### **Disposition prohibited during proceedings**

**33(1)** If proceedings have been commenced under this Act, a spouse or adult interdependent partner who knows or has reason to believe that the proceedings have been commenced shall not

- (a) dispose of or encumber any household goods, or
- (b) except in an emergency, remove from the family home any household goods that are household appliances or household effects or that form part of the household furnishings of that family home,

without an order of the Court or the consent of the other spouse or adult interdependent partner.

**(2)** A person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$1000.

RSA 2000 cM-8 s33;2018 c18 s2(33)

#### **Prevention of gift or sale**

**34(1)** If the Court is satisfied that a spouse or adult interdependent partner intends to transfer property to a person who is not a bona fide purchaser for value or to make a substantial gift of property that may defeat a claim of the other spouse or adult interdependent partner under this Act, the Court may, by order, restrain the making of the transfer or gift.

**(2)** An application for an order under subsection (1) may be made while the spouses or adult interdependent partners are cohabiting.

(3) An application for an order under subsection (1) may be made as an application in proceedings commenced under this Act or by separate application.

(4) An application for an order under subsection (1) may be made ex parte.

(5) If an application is made ex parte, the Court may dispense with service of notice of the application or direct that the application be served at a time and in a manner that it sees fit.

RSA 2000 cM-8 s34;2009 c53 s109;2018 c18 s2(34)

#### **Filing certificate of lis pendens**

**35(1)** A spouse or adult interdependent partner who commences proceedings under this Act may file a certificate of lis pendens with the Registrar of Land Titles.

(2) When the Registrar accepts a certificate of lis pendens for registration under this section, the Registrar shall make a memorandum of the certificate of lis pendens on the certificate of title to which it relates.

(3) If a certificate of lis pendens has been registered under this section, any instrument that

- (a) is registered after the registration of the certificate of lis pendens, and
- (b) purports to affect land included in the certificate of title,

is subject to the claim of the spouse or adult interdependent partner who filed the certificate of lis pendens.

RSA 2000 cM-8 s35;2018 c18 s2(35)

#### **Presumption of advancement**

**36(1)** In making a decision under this Act, the Court shall not apply the doctrine of presumption of advancement to a transaction between the spouses or adult interdependent partners in respect of property acquired

- (a) in the case of spouses, by one or both spouses before or after the marriage, or
- (b) in the case of adult interdependent partners, by one or both of them before or after they became adult interdependent partners.

(2) Notwithstanding subsection (1),

- (a) the fact that property is placed or taken in the name of both spouses or adult interdependent partners as joint owners is proof, in the absence of evidence to the contrary, that a joint ownership of the beneficial interest in the property is intended, and
- (b) money that is deposited with a financial institution in the name of both spouses or adult interdependent partners is deemed to be in the name of the spouses or adult interdependent partners as joint owners for the purposes of clause (a).

RSA 2000 cM-8 s36;2018 c18 s2(36)

### **Agreements between spouses or adult interdependent partners**

**37(1)** 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.

**(2)** An agreement under subsection (1) that is entered into by 2 persons before marriage is unenforceable after the marriage unless it is clear in the agreement that the parties intended the agreement to apply or continue to apply after the marriage.

**(3)** An agreement under subsection (1)

- (a) may provide for the distribution of property between the spouses or adult interdependent partners at any time, including, but not limited to, the time of their separation, the time at which they become former adult interdependent partners or the dissolution of their marriage, and
- (b) may apply to property owned by both parties to the agreement and by each of them at or after the time the agreement is made.

**(4)** An agreement under subsection (1) is unenforceable by a spouse if that spouse, at the time the agreement was made, knew or had reason to believe that the marriage was void.

(5) An agreement under subsection (1) that is entered into by a person purporting to be an adult interdependent partner, knowing or in circumstances in which the person ought to have known that there was no valid adult interdependent relationship within the meaning of the *Adult Interdependent Relationships Act*, is unenforceable by that person.

RSA 2000 cM-8 s37;2018 c18 s2(37)

#### **Formal requirements for agreement**

**38(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 the party 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.

RSA 2000 cM-8 s38;2018 c18 s2(38)

#### **Transitional — application of former Act**

**39(1)** In this section,

- (a) “former Act” means the *Matrimonial Property Act* as it read immediately before January 1, 2020;
- (b) “new Act” means the *Family Property Act*.

(2) Subject to subsection (4), the former Act continues to apply to spouses

- (a) in respect of whom a judgment of divorce is granted,
- (b) in respect of whom a declaration of nullity of marriage is made,
- (c) in respect of whom a judgment of judicial separation is granted, or

- (d) in respect of whom a declaration of irreconcilability under the *Family Law Act* is obtained

before January 1, 2020, or who were living separate and apart immediately before that date.

**(2.1)** Despite subsection (2), sections 15 and 18 of the former Act do not apply, but sections 15 and 18 of the new Act apply, to spouses referred to in subsection (2) if a matter described in subsection (2)(a), (b), (c) or (d) occurred on or after February 1, 2012, or if the spouses commenced living separate and apart on or after that date.

**(3)** The new Act applies to spouses other than those referred to in subsection (2).

**(4)** A proceeding commenced under the former Act that is not fully disposed of before January 1, 2020 may, with the consent of the parties, be dealt with and disposed of under the new Act.

**(5)** The new Act applies only to adult interdependent partners who had not begun living separate and apart and had not become former adult interdependent partners before January 1, 2020.

**(6)** For the purposes of subsections (2) and (5), spouses and adult interdependent partners are considered to have continued to live separate and apart notwithstanding any resumption of cohabitation during a single period of not more than 90 days with reconciliation as its primary purpose.

2018 c18 s2(39);2021 c16 s5

#### **Transitional — existing agreements**

**40** Where, before the coming into force of this section, 2 persons entered into an agreement with each other that provides for the status, ownership, valuation or division of property owned by one or both of them, the agreement remains enforceable after the coming into force of this section to the same extent, if any, that it was enforceable immediately before the coming into force of this section.

2018 c18 s2(39)



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