

Common-Law Couples in Ontario: Why “As Good as Married” Can Be a Costly Myth

Bill and Mary met a few years after each lost their spouse to illness. They hit it off immediately and, after a couple of years of dating, decided to live together in Bill’s house. Neither wanted to marry again. For the next 21 years, they shared a home as common-law partners. The house remained registered solely in Bill’s name.

Earlier this year, Bill passed away without a will. Like many couples in their situation, Bill and Mary assumed that in today’s world, Ontario’s family law would protect Mary. They believed she would simply inherit the house after two decades together.

They were wrong.

For many long-term couples in Ontario, the term “common-law” creates a dangerous illusion of security. Common-law partners often assume their relationship carries the same legal protections as marriage. When one dies, the reality can be devastating.

Under Ontario’s *Succession Law Reform Act*, the definition of “spouse” for inheritance purposes applies only to legally married couples¹. Common-law partners, no matter how many years they have lived together, have no automatic right to any share of the estate if their partner dies without a will. Because the house was solely in Bill’s name, it forms part of his estate. There is no right of survivorship, so it does not pass automatically to Mary.

The property must typically go through probate (a formal Application for a Certificate of Appointment of Estate Trustee). This court-supervised process confirms the estate trustee’s authority to transfer title. It can take many months, generate significant legal fees and court costs, and leave the surviving partner in limbo, especially if children from previous relationships or other heirs are involved.

This misconception is widespread. Many common-law couples believe their rights mirror those of married spouses after a certain number of years. The confusion is understandable: common-law partners *do* have some rights while both are alive (such as spousal support), and stronger protections exist in provinces like British Columbia.

The surviving partner is not entirely without recourse. Mary may be able to claim unjust enrichment or a constructive trust if she contributed financially or through labour to the home. If she was financially dependent on Bill, she may also seek dependant’s relief under Part V² of the *Succession Law Reform Act*. However, these claims have strict deadlines and require solid evidence.

¹ <https://www.ontario.ca/laws/statute/90s26>

² <https://www.ontario.ca/laws/statute/90s26#BK103>

The good news is that this unfortunate situation is largely preventable through proactive planning. Common-law couples should:

- Prepare mutual wills that clearly name each other as beneficiaries;
- Consider registering major assets (like the home) in joint tenancy with right of survivorship, where appropriate;
- Draft a cohabitation agreement to clarify property rights; and
- Review and update beneficiary designations on RRSPs, TFSAs, life insurance, and pensions.

I'm not a lawyer, but part of my financial planning practice involves understanding clients' full circumstances and referring them to the right professionals when I see potential problems on the horizon. A single consultation with an estates lawyer can save survivors like Mary years of expense, stress and financial uncertainty.

For couples who have built a life together, assuming "it will all work out" is risky. Whether through legal marriage or proper estate planning, taking action is the best way to protect the person you love.

Thanks for reading,

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