



Province of Alberta

FAMILY STATUTES AMENDMENT ACT, 2018

Statutes of Alberta, 2018
Chapter 18

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Office Consolidation

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FAMILY STATUTES AMENDMENT ACT, 2018

Chapter 18

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

Matrimonial Property Act

Amends RSA 2000 cM-8

2(1) The *Matrimonial Property Act* is amended by this section.

(2) The title and chapter number of the Act are repealed and the following is substituted:

Family Property Act Chapter F-4.7

(3) Section 1 is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(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;

(b) by adding the following after clause (a.1):

(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;

(c) by repealing clause (b) and substituting the following:

- (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;

(d) by repealing clauses (c) and (d);

(e) by adding the following after clause (d):

- (d.1) “relationship of interdependence” means a relationship of interdependence within the meaning of the *Adult Interdependent Relationships Act*;

(4) The following is added after section 1:

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.

(5) The heading preceding section 3 is repealed and the following is substituted:

Part 1 Family Property

(6) Section 3 is amended by striking out “matrimonial property order” **wherever it occurs and substituting** “family property order”.

(7) The following is added after section 3:

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.

(8) Section 4 is amended by striking out “matrimonial property order” **and substituting** “family property order”.

(9) Section 5 is amended

(a) **in subsection (1) by striking out** “matrimonial property order” **and substituting** “family property order in respect of spouses”;

(b) **by repealing subsection (2) and substituting the following:**

(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.

(10) The following is added after section 5:

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.

(11) Section 6 is amended

- (a) in subsection (1) by striking out** “matrimonial property order to which section 5(1)(a) or (b)” **and substituting** “family property order to which section 5(1)(a), (b) or (b.1)”;

- (b) **in subsection (2) by striking out** “matrimonial property order” **and substituting** “family property order”;
- (c) **in subsection (3)**
 - (i) **by striking out** “matrimonial property order” **and substituting** “family property order”;
 - (ii) **in clause (a) by striking out** “two” **and substituting** “2”.

(12) The following is added after section 6:

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.

(13) Section 7 is amended

- (a) **in subsection (1) by adding** “or adult interdependent partners” **after** “spouses” **wherever it occurs**;
- (b) **in subsection (2)**
 - (i) **in clauses (a) and (b) by adding** “or adult interdependent partner” **after** “spouse”;
 - (ii) **by repealing clause (c) and substituting the following:**
 - (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,

(iii) by repealing clause (d) and substituting the following:

(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

(iv) in clause (e) by adding “or adult interdependent partners” after “spouses”;

(v) by striking out the words following clause (e) and substituting “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”;

(c) by adding the following after subsection (2):

(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.

(d) in subsection (3)

- (i) in clause (a) by striking out “value of property” and substituting “value, as determined under subsection (2.2), of property”;**
- (ii) in clause (b) by adding “in the case of spouses who were not in a relationship of interdependence with each other immediately before the marriage,” before “property acquired by”;**

(iii) by adding the following after clause (b):

- (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);

(iv) in clause (c) by adding “in the case of spouses,” before “property”;

(v) by adding the following after clause (c):

- (c.1) in the case of adult interdependent partners, property acquired by an adult interdependent partner after becoming a former adult interdependent partner;
- (vi) **in clause (d) by adding “**, 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” **after “other spouse”**;
- (vii) **by adding the following after clause (d):**
- (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.
- (e) **in subsection (4) by adding “or during a relationship of interdependence with the other spouse immediately before the marriage” after “marriage”**;
- (f) **by adding the following after subsection (4):**
- (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.

(14) Section 8 is amended

(a) by repealing clause (a) and substituting 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) in clause (b)

- (i) **by adding** “or adult interdependent partner” **after** “spouse”;
- (ii) **by adding** “or adult interdependent partners” **after** “spouses” **wherever it occurs**;

(c) in clause (c) by adding “or adult interdependent partner” **after** “spouse”;

(d) by adding the following after clause (c):

- (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;
- (e) in clause (d)**
- (i) **by adding** “in the case of spouses,” **before** “the income”;
- (ii) **in subclause (i) by adding** “, 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” **after** “marriage”;
- (f) by adding the following after clause (d):**
- (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;
- (g) by repealing clause (e) and substituting the following:**
- (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;
- (h) in clauses (f) and (g) by adding** “or adult interdependent partners” **after** “spouses”;
- (i) in clause (h) by adding** “or adult interdependent partner” **after** “spouse”;
- (j) by repealing clause (i) and substituting the following:**

(i) a previous distribution of property between the spouses or adult interdependent partners by gift, agreement or family property order;

(k) in clause (k) by adding “or adult interdependent partner” after “spouse”;

(l) in clause (l) by adding “or adult interdependent partner” after “spouse” wherever it occurs.

(15) Section 9 is amended

(a) in subsection (1) by adding “or adult interdependent partners” after “spouses”;

(b) in subsection (2)

(i) in clause (a) by adding “or adult interdependent partner” after “spouse” wherever it occurs;

(ii) in clause (b) by adding “or adult interdependent partners” after “spouses”;

(iii) in clause (c) by adding “or adult interdependent partner” after “spouse” wherever it occurs;

(c) in subsection (3)

(i) in clauses (a), (b), (e) and (g) by adding “or adult interdependent partner” after “spouse” wherever it occurs;

(ii) in clause (i) by adding “or adult interdependent partners” after “spouses”.

(16) Section 10 is amended

(a) by striking out “matrimonial property order” wherever it occurs and substituting “family property order”;

(b) by adding “or adult interdependent partner” after “spouse” wherever it occurs.

(17) Sections 11, 12, 13 and 14 are repealed and the following is substituted:

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.

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.

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.

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.

(18) Section 15 is amended

- (a) by striking out** “or property transferred to a living spouse under a matrimonial property order” **and substituting** “or living adult interdependent partner or property transferred to a living spouse or living adult interdependent partner under a family property order”;
- (b) by adding** “or deceased adult interdependent partner” **after** “deceased spouse”.

(19) Section 17(1) is repealed and the following is substituted:**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.

(20) The heading preceding section 19 is repealed and the following is substituted:

Part 2
Family Home Possession

(21) Section 19 is amended

- (a) **by striking out** “matrimonial home” **wherever it occurs and substituting** “family home”;
- (b) **by adding** “or adult interdependent partner” **after** “spouse” **wherever it occurs.**

(22) Section 20 is amended

- (a) **by adding** “or adult interdependent partners” **after** “spouses” **wherever it occurs;**
- (b) **by striking out** “matrimonial home” **and substituting** “family home”.

(23) Section 21 is amended by striking out “matrimonial home” **and substituting** “family home”.

(24) Section 22 is amended

- (a) **in subsection (1)**
 - (i) **by striking out** “matrimonial home” **wherever it occurs and substituting** “family home”;
 - (ii) **by adding** “or adult interdependent partners” **after** “spouses” **wherever it occurs;**
- (b) **in subsection (2) by adding** “or the adult interdependent partner or partners” **after** “spouses”;
- (c) **by repealing subsection (3) and substituting the following:**

(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.

(25) Section 23 is amended

- (a) **by striking out** “matrimonial home” **and substituting** “family home”;
- (b) **by adding** “or adult interdependent partners” **after** “spouses”.

(26) Section 24 is repealed and the following is substituted:

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.

(27) Section 25 is amended by adding “or adult interdependent partner” after “spouse” wherever it occurs.

(28) Section 27 is amended

- (a) in subsection (1)(a) by adding “or adult interdependent partners” after “spouses”;**
- (b) in subsection (2) by adding “or adult interdependent partner” after “spouse” wherever it occurs.**

(29) Section 28 is amended by striking out “matrimonial home” wherever it occurs and substituting “family home”.

(30) Section 30 is repealed and the following is substituted:

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.

(31) Section 31 is amended

(a) **by repealing subsection (1) and substituting the following:**

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.

(b) **in subsection (2) by adding “or adult interdependent partner” after “spouse”.**

(32) Section 32 is amended

(a) **by adding the following after clause (b):**

- (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;

(b) **by adding the following after clause (c):**

- (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.

(33) Section 33(1) is amended

- (a) **by adding** “or adult interdependent partner” **after** “spouse” **wherever it occurs;**
- (b) **by striking out** “matrimonial home” **wherever it occurs** **and substituting** “family home”.

(34) Section 34 is amended

- (a) **in subsection (1) by adding** “or adult interdependent partner” **after** “spouse” **wherever it occurs;**
- (b) **in subsection (2) by adding** “or adult interdependent partners” **after** “spouses”.

(35) Section 35 is amended by adding “or adult interdependent partner” **after** “spouse” **wherever it occurs.****(36) Section 36 is amended**

- (a) **by repealing subsection (1) and substituting the following:**

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.
- (b) **in subsection (2) by adding** “or adult interdependent partners” **after** “spouses” **wherever it occurs.**

(37) Section 37 is repealed and the following is substituted:**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.

(38) Section 38 is repealed and the following is substituted:

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.

(39) The following is added after section 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.

(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.

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.

Consequential Amendments**Amends SA 2012 cE-8.1**

3(1) The *Employment Pension Plans Act* is amended by this section.

(2) The heading preceding section 78 is repealed and the following is substituted:

Division 4
Relationship Breakdown

(3) Section 80 is amended

- (a)** in subsection (1) by striking out “matrimonial” and substituting “family”;
- (b)** in subsection (2) by striking out “This Division applies only with respect to a matrimonial property order” and substituting “In respect of persons who are pension partners within the meaning of section 1(3)(a), this Division applies only with respect to a family property order”;
- (c)** by adding the following after subsection (2):
 - (2.1)** In respect of persons who are pension partners within the meaning of section 1(3)(b), this Division applies only with respect to a family property order made or agreement entered into
 - (a)** on or after January 1, 2020, or
 - (b)** before January 1, 2020 if there is filed with the administrator a written election by both pension partners to have this Division apply.
- (d)** in subsections (3) and (4) by striking out “matrimonial” and substituting “family”.

Amends SA 2014 cE-12.5

4(1) The *Estate Administration Act* is amended by this section.

(2) Section 10(1) is amended by striking out “and” at the end of clause (c) and by adding the following after clause (c):

- (c.1) to an adult interdependent partner of the deceased person on whom a notice would be required to be served under section 11(2.1) on application for a grant, a personal representative’s notice to an adult interdependent partner, and

(3) Section 11 is amended

(a) by adding the following after subsection (2):

(2.1) Subject to subsection (3.1), an applicant for a grant must serve a copy of the application and a notice pertaining to the rights of an adult interdependent partner under the *Family Property Act* on any adult interdependent partner, as defined in that Act, of the deceased person, if the adult interdependent partner is not the sole beneficiary under the will of the deceased person or under Part 3 of the *Wills and Succession Act*.

(b) by adding the following after subsection (3):

(3.1) The Court may by order dispense with the notice requirement under subsection (2.1) if the Court is satisfied that the adult interdependent partner does not have a right to make a claim under the *Family Property Act* against the estate of the deceased person.

Amends RSA 2000 cL-7

5(1) The *Law of Property Act* is amended by this section.

(2) Section 21 is repealed and the following is substituted:

**Application of the Family Property Act
and Family Law Act**

21 Notwithstanding section 15(2), the Court may, with respect to land that comprises a family home as defined in the *Family Property Act* or a family home as defined in the *Family Law Act*, stay proceedings under this Part

- (a) pending the disposition of an application made under the *Family Property Act* or section 68 of the *Family Law Act*, or

- (b) while an order made under the *Family Property Act* or section 68 of the *Family Law Act* remains in force.

6 The following provisions are amended by striking out “matrimonial property” wherever it occurs and substituting “family property”:

Act	Provision
Employment Pension Plans Act	72(4)(b), 78(b), 79(1), 81, 84(1)(b), (2), 86(1), 102(1)(a)(iii), 104(b)
Estate Administration Act	1(c)
Members of the Legislative Assembly Pension Plan Act	Schedule 1: 1(1)(l), 23(3)(b), 32; Schedule 2: 1(2)
Teachers’ Pension Plans Act	23(1)(p)

7 The following provisions are amended by striking out “Matrimonial Property Act” wherever it occurs and substituting “Family Property Act”:

Act	Provision
Employment Pension Plans Act	78(a), (b), 79(1), (2)
Estate Administration Act	11(2), (3)
Members of the Legislative Assembly Pension Plan Act	Schedule 1: 1(1)(l)
Wills and Succession Act	58(1)(b), 93(i)

Repeal and Coming into Force

9 Sections 2 to 7 come into force on January 1, 2020.



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