



Thinking of Living Common Law?

~ Know Your Rights!

By Brian Madigan

Often, couples living common law will mistakenly believe that they have equal ownership of the family home. This is not the case. They will only have equal ownership if they are on title, have signed a cohabitation agreement that includes this provision, or a Court makes this determination. Upon a breakdown of this arrangement a spouse will only be entitled to support, not a division of the property.

The *Family Law Act* provides a non-titled spouse with an “equal right of possession” of a matrimonial home. This is the home or homes that the couple lived in throughout the marriage (common law doesn’t count).

Possession means not only “occupancy” but includes certain additional rights as well:

- 1) the right to live in the home with “undivided possession”,
- 2) the right to limit the alienation of a matrimonial home by the titled spouse,
- 3) the right to notice from third parties if those third parties are seeking to obtain possession or dispose of the property or enforce their security with respect to the property in any way,
- 4) the right to exercise the “right of redemption” on behalf of the titled spouse,
- 5) the right to occupy the premises exclusively for a period of 60 days following the death of the spouse, and
- 6) the right to apply to the Court for an order providing “exclusive possession”.

The right to possession is “personal” as against the spouse. It ends when the parties cease to be spouses, this is the dissolution of the marriage (and this includes death).

This particular right cannot be signed away. An agreement which purports to waive or release this right in any way is unenforceable.

Again, this right of possession is only provided to a spouse who was “married”, and there simply is no statutory protection for a common law spouse.

If you are unsure about your rights, it would be wise to check this out. Don’t find out your rights when your relationship is in trouble, or when you are facing a divorce or the Estate Trustee of your spouse’s estate is demanding that you vacate the premises. If you are unsure, you should find out now.

While the law affords legal protection in many cases, it does not go so far as to do your negotiating for you. This you will have to do on your own! A good time to begin would be the time when you are about to move in together. At the very least, if you are not going to have half the equity in the house you should negotiate for the same “possessory rights” that are provided to a married spouse under the *Family Law Act*.

The best advice: if you are going to live common law, then have a cohabitation agreement signed before you move in.

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