

2018 Bill 28

Fourth Session, 29th Legislature, 67 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 28

FAMILY STATUTES AMENDMENT ACT, 2018

THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 28

2018

FAMILY STATUTES AMENDMENT ACT, 2018

(Assented to _____, 2018)

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

Family Law Act

Amends SA 2003 cF-4.5

1(1) The *Family Law Act* is amended by this section.

(2) Section 46(b) is repealed and the following is substituted:

(b) “child” means

- (i) a person who is under the age of 18 years, or
- (ii) a person 18 years of age or older who is under his or her parents’ charge and is unable by reason of
 - (A) illness,
 - (B) disability,
 - (C) being a full-time student as determined in accordance with the prescribed guidelines, or
 - (D) other cause

to withdraw from his or her parents’ charge or to obtain the necessaries of life;

Explanatory Notes

Family Law Act

1(1) Amends chapter F-4.5 of the Statutes of Alberta, 2003.

(2) Section 46(b) presently reads:

46 In this Part,

(b) “child” means a person

(i) who is under the age of 18 years, or

(ii) who is at least 18 years of age but not older than 22 years of age, and is unable to withdraw from his or her parents’ charge because he or she is a full-time student as determined in accordance with the prescribed guidelines;

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(2) The title and chapter number of the Act are repealed and the following is substituted: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

Matrimonial Property Act

2(1) Amends chapter M-8 of the Revised Statutes of Alberta 2000.

(2) The title and chapter number presently read:

MATRIMONIAL PROPERTY ACT
CHAPTER M-8

(3) Section 1 presently reads in part:

1 In this Act,

(b) “household goods” means personal property

(i) that is owned by one or both spouses, and

(ii) that was ordinarily used or enjoyed by one or both spouses or one or more of the children residing in the matrimonial home, for transportation, household, educational, recreational, social or esthetic purposes;

(c) “matrimonial home” means property

(i) that is owned or leased by one or both spouses,

(ii) that is or has been occupied by the spouses as their family 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;

- (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

(d) *“matrimonial property order” means a distribution by the Court under section 7 and an order under section 9;*

(4) Former adult interdependent partner.

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

(5) The heading preceding section 3 presently reads:

Part 1
Matrimonial 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”.

(6) Section 3 presently reads:

3(1) A spouse may apply to the Court for a matrimonial 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 matrimonial property order.

(7) Application by adult interdependent partner.

(8) Section 4 presently reads:

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

(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.

(9) Section 5 presently reads in part:

5(1) A matrimonial property order 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 matrimonial property order has been made under circumstances to which subsection (1)(b),(c),(d) or (e) applies, the Court may make a further matrimonial 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

(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.

resumption of cohabitation by the spouses during a period of more than 90 days with reconciliation as its primary purpose.

(10) Conditions precedent to application — adult interdependent partners.

(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

(11) Section 6 presently reads in part:

6(1) An application for a matrimonial property order to which section 5(1)(a) or (b) 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 matrimonial 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 matrimonial property order to which section 5(1)(d) applies may be commenced within

(a) two years after the date the spouses separated, or

(b) one year after the date the property is transferred or given,

whichever occurs first.

(12) Time for application — adult interdependent partners.

- (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”;

(13) Section 7 presently reads:

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

(2) If the property is

(a) property acquired by a spouse by gift from a third party,

(b) property acquired by a spouse by inheritance,

(c) property acquired by a spouse before the marriage,

(d) an award or settlement for damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses, 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,

the market value of that property at the time of marriage or on the date on which the property was acquired by the spouse, whichever is later, is exempted from a distribution under this section.

(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 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

(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.

- (ii) from the proceeds, whether direct or indirect, of a disposition of the original property;*
 - (b) 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);*
 - (c) 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;*
 - (d) property acquired by a spouse by gift from the other spouse.*
- (4) If the property being distributed is property acquired by a spouse during 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.*

(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;

(14) Section 8 presently reads:

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

- (a) the contribution made by each spouse to the marriage 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 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 by one or both spouses 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 to the acquisition, conservation or improvement of the property;*
- (d) the income, earning capacity, liabilities, obligations, property and other financial resources*
 - (i) that each spouse had at the time of marriage, and*
 - (ii) that each spouse has at the time of the trial;*
- (e) the duration of the marriage;*
- (f) whether the property was acquired when the spouses were living separate and apart;*
- (g) the terms of an oral or written agreement between the spouses;*
- (h) that a spouse has made*
 - (i) a substantial gift of property to a third party, or*

(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:

- (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 by gift, agreement or matrimonial property order;*
- (j) a prior order made by a court;*
- (k) a tax liability that may be incurred by a spouse as a result of the transfer or sale of property;*
- (l) that a spouse has dissipated property to the detriment of the other spouse;*
- (m) any fact or circumstance that is relevant.*

- (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”.**

(15) Section 9 presently reads:

9(1) If part of the property of the spouses 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 to pay money or transfer an interest in property to the other spouse;*
- (b) order that property be sold and that the proceeds be divided between the spouses as the Court directs;*
- (c) by order declare that a spouse has an interest in property notwithstanding that the spouse 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 to pay money over a period of time with or without interest;*
- (b) order a spouse 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);*

(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.**

- (e) *require a spouse, as a condition of an order, to surrender all claims to property in the name of the other spouse;*
- (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 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 as joint tenants, sever the joint tenancy;*
- (j) *make any other order that in the opinion of the Court is necessary.*

(16) Section 10 presently reads:

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

- (a) *a spouse 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 making the transfer or gift did so with the intention of defeating a claim that the other spouse 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 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 commenced the application for the matrimonial property order,*

(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

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.

(17) Sections 11, 12, 13 and 14 presently read:

11(1) Subject to this section, an application for a matrimonial property order may be made or continued by the surviving spouse after the death of the other spouse.

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

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

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

(4) An application by a surviving spouse for a matrimonial 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.

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

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, the executor, administrator or trustee shall not distribute any portion of the estate to a beneficiary without the consent of the living spouse 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 matrimonial property order with respect to property in the estate of the deceased spouse,

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

14(1) If an application for a matrimonial property order is made or continued by a spouse, the executor, administrator or trustee of the deceased spouse shall hold the estate subject to any matrimonial 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 matrimonial 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 for any loss to that spouse as a result of the distribution.

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,

(18) Section 15 presently reads:

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

(a) by a beneficiary under a will,

(b) by a beneficiary under the Intestate Succession Act, or

(c) by a dependant under the Dependants Relief Act.

(19) Section 17(1) presently reads:

17(1) If a question respecting property arises between spouses in any other matrimonial cause, the Court may decide the question as if it had been raised in proceedings under this Part.

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”.**

(20) The heading preceding section 19 presently reads:

Part 2
Matrimonial Home Possession

(21) Section 19 presently reads:

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

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

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

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

(22) Section 20 presently reads:

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,*
- (b) the needs of any children residing in the matrimonial 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”.

- (c) the financial position of each of the spouses, 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.*

(23) Section 21 presently reads:

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 matrimonial home.

(24) Section 22 presently reads:

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

- (a) is owned by one or both of the spouses,*
- (b) is leased by one or both of the spouses 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,*

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 have in the property to the extent stipulated in the order.

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

(25) Section 23 presently reads:

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

(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”.

(26) Section 24 presently reads:

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

(27) Section 25 presently reads in part:

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

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

(28) Section 27 presently reads:

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 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 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 in possession or under an order of the Court.

(29) Section 28 presently reads:

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 matrimonial home and a life estate in the matrimonial home vests in that spouse pursuant to the

(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

Dower Act, the registration of an order under this Part may be cancelled by the Registrar of Land Titles on application by that spouse.

(30) Section 30 presently reads:

30(1) An application under this Part

(b) may be joined with, or heard at the same time as, a matrimonial cause between the spouses, or

(c) may be made as an application in an action or proceeding between the spouses 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 a child residing in the matrimonial home as a result of the conduct of the respondent spouse.

(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 presently reads in part:

31(1) If an application has been commenced under Part 1, each spouse shall file with the Court and serve on the other spouse a statement, verified by oath, disclosing particulars of all the property of that spouse, whether it is situated in Alberta or elsewhere.

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

- (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”.**

(32) Section 32 presently reads:

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;*
- (c) prescribing the information to be contained in a statement made under section 31.*

(33) Section 33(1) presently reads:

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

- (a) dispose of or encumber any household goods, or*

(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:**

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

without an order of the Court or the consent of the other spouse.

(34) Section 34 presently reads in part:

34(1) If the Court is satisfied that a spouse 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 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 are cohabiting.

(35) Section 35 presently reads:

35(1) A spouse 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 who filed the certificate of lis pendens.

(36) Section 36 presently reads:

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 in respect of property acquired by one or both spouses before or after the marriage.

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

(2) *Notwithstanding subsection (1),*

- (a) *the fact that property is placed or taken in the name of both spouses 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 is deemed to be in the name of the spouses as joint owners for the purposes of clause (a).*

(37) Section 37 presently reads:

37(1) Part 1 does not apply to property that is owned by either or both spouses or that may be acquired by either or both of them, if, in respect of that property, the spouses 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) may be entered into by 2 persons in contemplation of their marriage to each other but is unenforceable until after the marriage.

(3) An agreement under subsection (1)

- (a) may provide for the distribution of property between the spouses at any time including, but not limited to, the time of separation of the spouses or the dissolution of the marriage, and*
- (b) may apply to property owned by both spouses 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.

(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,

(38) Section 38 presently reads:

38(1) An agreement referred to in section 37 is enforceable if each spouse or each person, in the case of persons referred to in section 37(2), has acknowledged, in writing, apart from the other spouse or person

- (a) that the spouse or person is aware of the nature and the effect of the agreement,*
- (b) that the spouse or person is aware of the possible future claims to property the spouse or person may have under this Act and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, and*
- (c) that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.*

(2) The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

(39) Transitional — application of former Act; Transitional — existing agreements.

(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”.**

Consequential Amendments

3(1) Amends chapter E-8.1 of the Statutes of Alberta, 2012.

(2) The heading preceding section 78 presently reads:

*Division 4
Marriage Breakdown*

(3) Section 80 presently reads:

80(1) This Division applies with respect to the division and distribution of benefits where, as between a member pension partner and the non-member pension partner, a matrimonial property order or agreement is filed with an administrator, and this Division applies despite any other provision of this Act, except as specifically stated, and despite any other rule of law or equity to the contrary.

(2) This Division applies only with respect to a matrimonial property order made or agreement entered into

(a) on or after March 1, 2000, or

(b) before March 1, 2000 if there is filed with the administrator a written election by both pension partners to have this Division apply.

(3) For the purposes of this Division, a matrimonial property order or agreement is filed with the administrator if it or a certified copy of it is served on the administrator in a manner referred to in section 156, with the onus of proving proper service being on the server.

(4) Subject to this Division, the entitlement of any person to a benefit is subject to entitlements arising under a matrimonial property order or agreement filed with the administrator.

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

4(1) Amends chapter E-12.5 of the Statutes of Alberta, 2014.

(2) Section 10(1) presently reads:

10(1) A personal representative named in a will who acts in the administration of the estate without applying for a grant must provide, in accordance with the Rules,

- (a) to the beneficiaries of the deceased person, the personal representative's notice to beneficiaries described in subsection (2),*
- (b) to any family members of the deceased person, an attorney, a trustee, the Public Trustee or a guardian, on whom a notice would be required to be served under section 11(1) on application for a grant, a personal representative's notice to family members,*
- (c) to a spouse of the deceased person on whom a notice would be required to be served under section 11(2) on application for a grant, a personal representative's notice to a spouse, and*
- (d) to the Public Trustee and to the other persons referred to in section 12, as applicable, a personal representative's notice, as required by the Rules.*

(3) Section 11 presently reads:

11(1) Unless otherwise ordered by the Court, an applicant for a grant must serve a copy of the application and a notice pertaining to the rights of family members under Part 5 of the Wills and Succession Act on the following as applicable:

- (a) the spouse of the deceased person, if the spouse is not the sole beneficiary under the will of the deceased person or under Part 3 of the Wills and Succession Act;*
- (b) the adult interdependent partner 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;*

make a claim under the *Family Property Act* against the estate of the deceased person.

- (c) *each child of the deceased person who, on the date of the deceased person's death, was an adult who was unable by reason of a physical disability to earn a livelihood;*
- (d) *a child of the deceased person who*
 - (i) *was, on the date of the deceased person's death, at least 18 but less than 22 years of age, and*
 - (ii) *was unable to withdraw from his or her parents' charge because he or she was a full-time student as determined in accordance with the Family Law Act;*
- (e) *the attorney of an adult*
 - (i) *who is a child of the deceased person,*
 - (ii) *who was an adult on the date of the deceased person's death, and*
 - (iii) *who is unable to earn a livelihood by reason of mental disability;*
- (f) *the trustee of a represented adult*
 - (i) *who is a child of the deceased person,*
 - (ii) *who was an adult on the date of the deceased person's death, and*
 - (iii) *who is unable to earn a livelihood by reason of mental disability;*
- (g) *the Public Trustee, if the deceased person is survived by*
 - (i) *a child who was a minor on the date of the deceased person's death, or*
 - (ii) *a grandchild or great-grandchild who was a minor on the date of the deceased person's death and in respect of whom the deceased person stood in the place of a parent on the date of the deceased person's death;*
- (h) *the guardian of a child, grandchild or great-grandchild referred to in clause (g).*

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:

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

(3) The Court may by order dispense with the notice requirement under subsection (2) if the Court is satisfied that the spouse does not have a right to make a claim under the Matrimonial Property Act against the estate of the deceased person.

(4) If the deceased person is survived by a child who was an adult on the date of the deceased person's death who is unable to earn a livelihood by reason of mental disability, who has no attorney and for whom a trustee has not been appointed, the Court may, having regard to the value of the estate, the circumstances of the child and the likelihood of success of an application made on the child's behalf under Part 5, Division 2 of the Wills and Succession Act,

(a) direct that a grant be issued subject to any conditions the Court considers appropriate, or

(b) direct

(i) that a grant not be issued in respect of the deceased person's estate until a trustee has been appointed for the child, and

(ii) that the applicant or some other person must apply to have a trustee appointed for the child under the Adult Guardianship and Trusteeship Act.

(5) A grant must not be issued unless the Court is satisfied that the requirements of this section have been complied with, except that the Court may dispense with the requirement to serve a copy of the application or a notice on any person if it is shown to the Court's satisfaction that the person could not be found after reasonable inquiry.

5(1) Amends chapter L-7 of the Revised Statutes of Alberta 2000.

(2) Section 21 presently reads:

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*”:

21 Notwithstanding section 15(2), the Court may, with respect to land that comprises a matrimonial home as defined in the Matrimonial 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 Matrimonial Property Act or section 68 of the Family Law Act, or*
- (b) while an order made under the Matrimonial Property Act or section 68 of the Family Law Act remains in force.*

6 Change in terminology.

7 Amends references to the name of the Act in other Acts.

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

8 The *Married Women's Act* is repealed.

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

Repeal and Coming into Force

8 Repeals chapter M-6 of the Revised Statutes of Alberta 2000.

9 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To