



Heritage Law*

Family Law

For High Net Worth Clients: The Essentials

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Karen Redmond and Nicole Garton-Jones

Heritage Law Speaking Series 2008/2009

- September 24, 2008 Estate Planning for High Net Worth Clients: The Essentials
- October 29, 2008 Family Law for High Net Worth Clients: The Essentials
- December 3, 2008 Estate Planning for Disabled Beneficiaries
- January 28, 2009 Second Marriages: Asset Protection and Estate Issues
- February 25, 2009 Dispelling the Myths of Separation and Divorce
- March 25, 2009 Estate Administration: The Essentials
- April 29, 2009 Estate Disputes and Litigation: What Clients Need to Know
- May 27, 2009 Family Law Dispute Resolution Options for Clients



Family Law

- A. Married vs. Common Law
- B. What is Separation
- C. Getting Divorced
- D. Asset Division Basics
- E. Spousal Support Basics
- F. Children: Guardianship, Custody & Access
- G. Children: Child Support
- H. Planning at the Outset to Avoid Disputes
- I. Dispute Resolution Options



A. Married v. Common Law

- Any two capable people over the age of 19, who are not married to anyone else can get married
- Anyone under 19 must have the written consent of both parents



A. Married vs. Common Law

- No one under 16 can get married without consent from the Supreme Court
- Must be married by a person properly licensed to conduct marriages



A. Married vs. Common Law

Common Law Partnerships

- Cannot apply for division of matrimonial property and pension entitlements under *Family Relations Act*
- Property claims must be made by common law principles of constructive trust
- Must have lived in a marriage-like relationship for 2 years to be able to claim spousal support



B. What is Separation

- Physical separation marks the end of a common law relationship
- No such thing as a “legal separation” in BC for a married couple
- Separation is accomplished, in most cases, by simply leaving the family home with the intention of living separate and apart
- It is possible for a married couple to live under the same roof and be deemed to be separated if that is the intent and understanding of both parties
- Everyone is entitled to separate; the function of the family lawyer is to assist in the settlement of the issues arising from the breakdown of the marriage
- Separation for one year or more is the most common ground for obtaining a divorce order (other grounds are adultery & cruelty)



C. Getting Divorced

Grounds for Divorce

“No Fault” System

Common law: separation = it's over



D. Asset Division Basics

- Only married couples are entitled to division of property under the *Family Relations Act*
- The definition of spouse includes same-sex spouses, however unmarried spouses are expressly excluded.
- Absent a cohabitation agreement, if an unmarried person wants to make a property claim, they must do so by relying on the common law principles of unjust enrichment and constructive trust



D. Asset Division Basics

- Family Assets Definition
- Presumption of equal division of “family assets”
- Rebutting the presumption -
Reapportionment



E. Spousal Support Basics

Spousal Support

- Available to common law and married couples
- Entitlement – not automatic like child support
- Spousal Support Advisory Guidelines
- Amount
- Duration



F. Children

- The best interests of the child are paramount
- Guardianship: Sole, Joint, Parallel
- Custody: Sole, Joint, Split, Shared
- Access: Definition, Supervised & Conditional



G. Children: Child Support

- Definition
- Federal Child Support Guidelines
- Basic Child Support – Sole/Primary Residence, Shared & Split Custody
- Special Expenses



H. Planning to Avoid Disputes

Co-Habitation Agreements

Marriage Agreements



I. Dispute Resolution Options

Interests Based Negotiation:

- Mediation
- Collaborative Law

Positional Bargaining:

- Negotiation between Counsel
- Litigation

End Product:

- Separation Agreement
- Court Order (Imposed by Judge or by Consent)





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Thank you!

Karen Redmond & Nicole Garton-Jones

The Village at Park Royal

203 – 815 Main St.

West Vancouver, BC

V7T 2Z3

Tel: 778-786-0615

