

Financial Planning Quick Tip

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SUBJECT: Common-Law Partners vs. Married Spouses – Is there a difference?

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Are you living in a common-law relationship (same or opposite sex)? If so, you may be wondering if there is any difference in the way you are treated for tax purposes and whether you have the same rights on death that are conferred to legally married spouses. The following is a brief summary of the key similarities and differences pertaining to common-law partners.

From a tax perspective, there is no longer a difference in how common-law partners are treated vs. married couples. This is due to amendments to the Income Tax Act, which added common-law partners to the definition of “spouse” effective 1993. This was followed by another amendment in 2001, which then added “same-sex” common-law partners to the definition of “spouse”. Where there is a notable difference, however, is in the way common-law spouses are treated on death when the partners have **no valid Will** in place.

Income Tax Treatment: both common-law partners and legally married spouses are treated equally the same for all provisions of the Income Tax Act. Here are some examples.

Common-law spouses are:

- able to claim the marital credit
- subject to all income attribution rules
- able to contribute to a spousal RSPs
- able to designate only one property between each other as a principal residence for purposes of the principal residence exemption
- included in the definition of first time homebuyer under provisions of the Home Buyer’s Plan.
- able to transfer assets to a surviving partner on tax-deferred basis on death

Income Tax Act Definition of Common-Law Partners: you are considered to be a “common-law partner” if you have been cohabiting in a conjugal relationship for a continuous period of at least one year or if you are the natural or adoptive parents of a child. If so, then you would identify your status by checking off the “common-law” box on page 1 of your Personal Income Tax return.

Income Tax Definition of Spouse: you are considered a “spouse” if you are legally married. You need to identify this status by checking off the “married” box on page 1 of your Personal Income Tax return.

Legal Treatment on Death if No Valid Will in Place: if you die intestate (without a valid Will), Provincial Intestacy Laws will govern how your assets will be distributed. **While married spouses are recognized under all provincial intestacy laws, not all provinces recognize common-law partners. Of those provinces that do, they do not necessarily recognize “same-sex” common-law partners.** Further a few provinces will recognize same-sex common-law partners, but only if the partners recorded their relationship in a civil registry. Therefore, if you are living in a common-law relationship (opposite or same-sex), and intend to leave your assets to your partner on your death, then depending on the intestacy laws in your province, there is a risk that your partner will not inherit unless you protect yourself with a few simple strategies:

- Ensure you have a valid Will in place
- If you are in a same-sex common-law relationship, record your relationship in the civil registry (if applicable in your province) for further protection
- Make your accounts joint with right of survivorship (JWROS) and designate your partner as the beneficiary of your RSPs and life insurance plans where appropriate (except for Quebec which does not permit beneficiary designations and where JWROS does not exist)

If you have any questions or require clarification of any of the issues discussed in this document, do not hesitate to discuss these with your advisor.

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