



# Real Estate Primer

WITH LAURA HOLLAND

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## March 2013 New BC Family Law Act

by Laura Holland, Senior Counsel

### NEW ACT GOVERNS FAMILY LAW

DBM does not practice in the area of family law, but there are some highlights that may affect our clients, which we wanted to share.

In March of 2013, BC passed a new act governing family law matters, called the *Family Law Act*. It is very different from the previous Act.

- There are a variety of ways to resolve family law disputes (separation issues) including mediation, arbitration and court proceedings.

### PARENTING COORDINATORS

- The court may appoint a Parenting Co-ordinator to assist families for up to two years with issues like regular contact and vacation scheduling without ongoing applications to court.

### DIVISION OF ASSETS AFTER SEPARATION

- Definition of spouse – parties have been living together for at least 2 years in a “marriage-like” relationship.
- **NEW** - “Family assets” are subject to division between separating parties. Excluded from the definition of family assets are inheritances, court settlements, and wealth acquired before the relationship begins.
  - In other words, you get to keep the stuff you had going in to a relationship. Any increase in value will be subject to division. It is no longer relevant if assets are used as by the family during the relationship. IE/ the cottage gifted by parents to one spouse before the relationship starts will not be considered part of family assets if used by the family during the relationship.

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- Family debt is presumed to be split equally and includes debt acquired between date of co-habitation and date of separation.
- Separation for the purpose of dividing property occurs on the date the parties intend to separate permanently, not on the date of court order or written separation agreement.

## ARE YOU MY MOTHER? (ASSISTED REPRODUCTION)

- A parent may include an egg or sperm donor, surrogates, intended parents and biological parents. A child could have 5 parents under the new legislation!
- If you have children by surrogacy arrangements, only agreements regarding whom is to be classed as a parent entered into **before conception** will be binding.
- Only parents who act as guardians may make parental decisions.

## ESTATE ISSUES

### Spousal Support

- A spousal support order may be binding on the estate of the deceased payor.
- The surviving spouse has to show need, that there are sufficient assets in the estate, and consider the other beneficiaries.
- The surviving spouse can make a claim even if there is no court order regarding support.
- The personal representative should ensure surviving spouse has no intention of making claim for support before distributing assets.

### Guardianship

- Any guardian, not just a parent, may appoint someone to be the new guardian of a child, on his or her death. IE/ Grandma could appoint a new guardian.
- If someone is acting as guardian temporarily (a “standby guardian”), this appointment will survive the death of parent, and will override any appointment made in a will, unless specifically limited at time of the standbys appointment.
- A parent who has not been the guardian of a child does not become a guardian on the death of the child’s current guardian.

## GRANDPARENTS RIGHTS

- Grandparents may apply to the court for contact with the child or guardianship.

### Disclaimer

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