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LAW FIRM

Do both spouses need to be on a house title?

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There is no law in Manitoba requiring both spouses or common-law partners to be named on the property title to their house. However, there are various reasons why you may consider this or that it may be required.

If you are buying a house and getting a mortgage, your lender may require that both spouses or common-law partners be on the property title. Generally, if both are included as part of the mortgage approval process, then both will need to be named on the property title. Similarly, if only one spouse or common-law partner is approved for the mortgage, it is likely that they will be the only person named on the title. This will be determined based on the instructions of the lender.

It is common for both spouses or common-law partners to be named on a property title as joint tenants. This means that each spouse or common-law partner has an ownership interest in the property and there is a "right of survivorship". If one spouse or common-law partner passes away, then the other will become the sole owner of the property. This is a common estate planning tool for a marital home or other property.

It is important to note that just because one spouse or common-law partner is not named on the title does not mean that they have no entitlement or rights to the property. The *Homestead Act* states that both parties have homestead rights if they live on a property owned by one of them or the property is jointly owned as their marital home.

A spouse or common-law partner who is not named on title to the marital home has a life interest in the property. This means that the spouse or common-law partner who is not on the title is required to consent to a disposition (sale) of the property or consent to the registration of a mortgage or other encumbrance against the title. So even though that spouse or common-law partner is not on title, they do have rights in the property.

Likewise, in the event of a separation, the property would still be considered an asset for the purposes of the *Family Property Act* and the spouse or common-law partner not on title would still have an interest in the property.

The Family Property Act also recognizes a right to account for property owned by spouses or common-law partners, regardless of who is in the title. A property that is acquired by either party during their cohabitation or marriage would be a "family asset", even if the title is only in one spouse's name. In the event of a separation, the property would form part of a family property accounting.

There are some exceptions to this rule. When a property is inherited or acquired by one party prior to cohabitation or marriage, the property or part of the property *may* not be included in the family property accounting, but whether an exception applies must be determined on a case-by-case basis.

Rights and interests may change depending on how the property title is held, how the property is used and if a couple marries or is considered "common-law" under the applicable legislation. It is important to understand the different ways in which you can hold a property title and the implications of changing parties to the property title, to ensure your title is set up properly for your circumstances.

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