

DIVISION 2 — SPOUSAL HOME

Right to spousal home

26 (1) This Division applies to

- (a) an intestate estate that includes a spousal home, and
- (b) an estate in respect of which the spousal home is not the subject of a gift or otherwise disposed of by a will.

(2) If this Division applies, the surviving spouse may acquire the spousal home from the personal representative to satisfy, in whole or in part, the surviving spouse's interest in the estate in accordance with this Division.

Notice by personal representative

27 (1) If this Division applies, the personal representative of a deceased person must, at the time an application for a representation grant is made, give notice to the surviving spouse of the right of the surviving spouse to acquire the spousal home in accordance with this Division.

(2) A surviving spouse must exercise the right to acquire the spousal home during the period ending no later than 180 days after the date on which the representation grant is issued to the personal representative unless the court, before or after the expiration of that period, extends the time by which the right may be exercised.

(2.1) If the spousal home is located on Nisga'a Lands or treaty lands, the personal representative must, at the time an application for a representation grant is made, give notice of section 18.3 [*no right to acquire Nisga'a Lands or treaty lands*] to the surviving spouse in addition to the notice under subsection (1) .

(3) If the court grants an extension of the period referred to in subsection (2) , a personal representative who disposes of the spousal home is not liable if the disposal is made

- (a) after 180 days from the date the representation grant is issued, and
- (b) before the notice of the right to acquire the spousal home is delivered to the personal representative under section 29 (1) or before the court, under subsection (2) of this section, extends the time by which that right may be exercised.

Prohibition on disposing of spousal home

28 A personal representative must not, without the written consent of the surviving spouse, dispose of the spousal home during the 180 days after the date on which the representation grant is issued or for any period of time extended under section 27 (2) unless assets other than the spousal home are not sufficient to pay the debts and liabilities of the estate and a mortgage or charge on the spousal home would not raise sufficient money to pay those debts and liabilities.

Notice exercising right to spousal home

29 (1) A surviving spouse may exercise his or her right to acquire the spousal home by delivering, within the required time referred to in section 27 (2) , a written notice to

- (a) the personal representative of the deceased person, unless the surviving spouse is the personal representative,
- (b) the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate, and
- (c) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate is a minor or a mentally incapable person without a nominee.

(2) A notice under subsection (1) must contain

- (a) a statement to the effect that the surviving spouse requires the personal representative to transfer the interest in the spousal home to the surviving spouse, and
- (b) a statement of the value the surviving spouse places on the deceased person's interest in the spousal home as of the date of the deceased person's death.

Dispute over value of deceased person's interest

30 (1) If the personal representative disputes the value of the deceased person's interest in the spousal home set out in a notice under section 29, the personal representative must deliver to the surviving spouse, within a reasonable time, a written response to the notice stating the value the personal representative places on the deceased person's interest.

(2) If the personal representative and the surviving spouse do not agree on the value of the deceased person's interest in the spousal home, the surviving spouse or the personal representative may apply to the court for an order determining the value of the deceased person's interest.

(3) If a surviving spouse who exercises the right to acquire the spousal home is the sole personal representative of the deceased person, the surviving spouse must apply to the court for an order determining the value of the deceased person's interest in the spousal home unless

- (a) the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate, and
- (b) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate is a minor or a mentally incapable person without a nominee,

agree in writing to the value that the surviving spouse places on the deceased person's interest.

(4) If the surviving spouse, being the sole personal representative, does not apply to the court for an order under subsection (3) within 180 days of the date of the notice referred to in section 29,

(a) a descendant entitled to share in the estate or that part of the estate that is to be treated as an intestate estate, or

(b) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate is a minor or a mentally incapable person without a nominee,

may apply to the court for an order determining the value of the deceased person's interest in the spousal home.

Purchase of spousal home by surviving spouse

31 (1) If the fair market value of the deceased person's interest in the spousal home exceeds the value of the surviving spouse's interest in the estate under section 21 [*spouse and descendants*], subject to subsection (3) of this section, the surviving spouse may purchase the remainder of the deceased person's interest from the personal representative, or from those in whom that interest beneficially vests, in accordance with the valuation of the deceased person's interest in the spousal home as determined under this Division.

(2) The surviving spouse may purchase the deceased person's interest in the spousal home under this Division whether or not the surviving spouse is a personal representative of the deceased person and despite any rule of law concerning the purchase of trust property by a trustee.

(3) Before a surviving spouse may make an application under section 33, the surviving spouse must provide financial information as set out in the Supreme Court Civil Rules to

(a) the personal representative of the deceased person, and

(b) the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate.

Occupancy costs of spousal home

32 A surviving spouse who occupies the spousal home pending his or her purchase of the spousal home under this Division must pay, from the date of death of the deceased person to the date of the purchase of the spousal home,

(a) the cost of insuring the spousal home against damage, destruction and public liability,

- (b) all applicable taxes, other than any prescribed taxes, assessed against the spousal home from the date of death of the deceased person to the date of purchase of the spousal home,
- (c) all reasonable and necessary expenses to maintain and repair the spousal home,
- (d) rates and charges for electricity, gas, fuel, oil and water consumed and similar utilities at the spousal home, and
- (e) a periodic payment that falls due under any mortgage on the spousal home and any bonus or payment of a penalty resulting from any prepayment by the surviving spouse.

Retention of spousal home

33 (1) On application by a surviving spouse, the court may make an order under subsection (2) if

- (a) the surviving spouse is ordinarily resident in the spousal home at the time of the deceased person's death,
- (b) assets in the estate are not sufficient to satisfy the interests of all descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate without disposing of the spousal home,
- (c) the court is satisfied that purchasing the spousal home under section 31 would impose a significant financial hardship on the surviving spouse,
- (d) the court is satisfied that, in all the circumstances, a greater prejudice would be imposed on the surviving spouse by being unable to continue to reside in the spousal home than would be imposed on the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate by having to wait an indeterminate period of time to receive all or part of their share of the intestate estate, and
- (e) either
 - (i) the surviving spouse has resided in the spousal home for a sufficient period of time to have established a connection to the spousal home, or
 - (ii) the surviving spouse has a sufficient connection with the community or members of the community in the vicinity of the spousal home to warrant an order under subsection (2) .

(2) The court may, subject to any terms or conditions the court considers appropriate, make an order doing one or more of the following:

- (a) vesting the same interest in the spousal home in the surviving spouse that the deceased person had;

- (b) specifying the amount of money the surviving spouse must pay to the descendants towards satisfaction of their interest in the estate;
- (c) converting the remaining unpaid interest of the descendants in the intestate estate into a registrable charge against the title to the surviving spouse's interest in the spousal home;
- (d) determining an interest rate, as that term is defined in section 7 [*interest rate*] of the *Court Order Interest Act*, or at any other rate the court considers appropriate, for the amount the descendants are entitled to under paragraph (c) of this subsection;
- (e) determining the value of the registrable charge referred to in paragraph (c) to include the principal amount owing to the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate and the expected value of the future interest that will be earned under paragraph (d) .

Registrable charges

34 (1) A registrable charge referred to in section 33 (2) becomes due and payable in the circumstances specified by the court, having regard to prevailing residential lending practices in Canada, but if none are specified, becomes due and payable on the earliest of the following:

- (a) twelve months after the date of death of the surviving spouse;
- (b) twelve months after the date the surviving spouse ceases residing in the spousal home;
- (c) the completion date of the sale of the spousal home.

(2) If a registrable charge payable under subsection (1) is not paid, the owner of the registrable charge may take any action that a mortgagee of land may take under the prescribed standard mortgage terms under the *Land Title Act*.

(3) A registrable charge is not enforceable until a form approved by the Director of Land Titles accompanied by a certified copy of the court order under section 33 (2) , in relation to the registrable charge, is registered under the *Land Title Act*.

(4) The owner of a registrable charge, on receipt of payment of the total amount secured by the registrable charge, must deliver to the registered owner of the spousal home or to that person's representative a release of the registrable charge in the form approved by the Director of Land Titles.

(5) A registrable charge may be released from the title to the spousal home by filing in a land title office

- (a) a release of the registrable charge executed by the owner of the registrable charge in the form approved by the Director of Land Titles, or
- (b) a certified copy of a court order releasing the registrable charge.

Circumstances when registrable charge becomes payable

35 (1) In this section, "charge" has the same meaning as in the *Land Title Act*.

(2) In addition to the circumstances described in section 34 (1) , a registrable charge also becomes due and payable if the court, on application by or on behalf of the owner of the registrable charge, orders that it should become due and payable because of the following:

(a) the surviving spouse has not paid an amount required to be paid under or secured by a charge registered against the title of the spousal home in priority to the registrable charge;

(b) a tax or other charge is levied against the title of the spousal home and has not been paid, unless payment has been lawfully deferred;

(c) an action or failure to take action jeopardizes the value of the spousal home to such an extent that it no longer provides sufficient security for the total amount secured by the registrable charge;

(d) the provisions of the registrable charge have not been complied with or an event has occurred pursuant to those provisions by which the amount secured by the registrable charge becomes due and payable.

(3) If a registrable charge becomes payable by order of the court under subsection (2) , the surviving spouse has a period of 180 days to sell his or her interest in the spousal home in order to pay, in full, the amount secured by the registrable charge.

(4) After the period referred to in subsection (3) , the owner of the registrable charge may take any action in respect of the registrable charge that a mortgagee of land may take under the prescribed standard mortgage terms under the *Land Title Act* if the surviving spouse has not sold his or her interest in the spousal home or the owner of the registrable charge has not been paid.

(5) The owner of a registrable charge may, before or after it is registered in a land title office, postpone the priority of the registrable charge to other charges.

(6) The owner of a registrable charge may sell, assign or otherwise dispose of the registrable charge before or after it is registered in a land title office in a form approved by the Director of Land Titles.

(7) If the sale of a spousal home yields sale proceeds that are not sufficient to pay the full amount secured by a registrable charge the court may order the release of the registrable charge, but may not make any order to recover from the estate, the surviving spouse or the estate of the surviving spouse any shortfall resulting from the insufficiency of sale proceeds to pay the amount secured by the registrable charge.