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MATRIMONIAL REAL PROPERTY LAW, 2015

Amended by BCR September 15, 2015

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22. (1) In making an order under section 20, the best interests of any ᐃᐃᐃᐃᐃᐃᐃ of the ᐃᐃᐃᐃᐃᐃᐃ (child of the conjugal relationship) who may be affected by the order must be the paramount consideration.

(2) To determine what is in the best interests of a ᐃᐃᐃᐃᐃᐃᐃ (child), all of the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) rights, needs and circumstances must be considered, including the following:

- (a) the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) health and emotional well-being;
- (b) the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the ᐃᐃᐃᐃᐃᐃᐃᐃ (child) and significant persons in the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) life;
- (d) the history of ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) care;
- (e) the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) right to stability, given the ᐃᐃᐃᐃᐃᐃᐃᐃ's (child's) age and stage of development;
- (f) the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) right to reside on ᐃᐃᐃᐃ ᐃᐃᐃᐃ (lands) and not to be removed or relocated from ᐃᐃᐃᐃ ᐃᐃᐃᐃ (lands) without their free, prior and informed consent;
- (g) the impact of any ᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family violence) on the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) right to safety, security or well-being, whether the ᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family violence) is directed toward the ᐃᐃᐃᐃᐃᐃᐃᐃ (child) or another ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family) member;
- (h) whether the actions of a person responsible for the ᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family violence) indicate that the person may be impaired in his or her ability to care for the ᐃᐃᐃᐃᐃᐃᐃᐃ (child) and meet the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) needs; and
- (i) the ᐃᐃᐃᐃᐃᐃᐃᐃ (child's) right to recover, use, enjoy, preserve and pass on to future generations ᐃᐃᐃᐃ histories and language, oral traditions and culture.

(3) In making an order under section 20, the court must also consider:

- (a) the best interests of any ᐃᐃᐃᐃᐃᐃᐃᐃ (child) who is not a ᐃᐃᐃᐃᐃᐃᐃᐃ of the ᐃᐃᐃᐃᐃᐃᐃᐃ (child of the conjugal relationship) but who is in the charge of either ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner;
- (b) the history and nature of the ᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family violence);
- (c) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
- (d) the interests of any ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (elder) or person with a disability who habitually resides in the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home) and for whom either ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner is the caregiver;
- (e) the fact that a person, other than the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partners, holds an interest in or to the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home);

(b) any person who is of the age of majority or over, whom the applicant is seeking to have vacated from the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home); and

(c) any person who holds an interest in or to the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home).

(2) Any person who has been served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regard to their interests or rights in or to the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home).

ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Exclusive Occupation Order)

34. (1) A court may make an order that grants the applicant exclusive occupation of a ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home) that is not ᐃᐃᐃᐃ-ᐃᐃᐃᐃ, and reasonable access to that home, subject to any conditions set out in section 35, and for any period of time that the court determines is reasonable in the circumstances.

(2) Pending the determination of an application under subsection (1), the court may make an interim order to the same effect as an order under subsection (1).

Content of ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Exclusive Occupation Order)

35. An order under section 34 may contain a provision requiring any or all of the following:

(a) the applicant's ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner and any specified person — whether or not they are members — to vacate the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home), immediately or within a specified period of time, and prohibiting them from re-entering the home;

(b) the applicant's ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner to preserve the condition of the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home) until that person vacates it;

(c) the applicant to make payments to their ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner toward the cost of other accommodation; or

(d) either ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner to pay for all or part of the repair and maintenance of the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home) and of other liabilities arising in respect of the ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (family home), or to make payments to the other ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner for those purposes.

Considerations

36. (1) In making a ᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Exclusive Occupation Order) under section 34, the best interests of any ᐃᐃᐃᐃᐃᐃᐃᐃᐃᐃ (child of the conjugal relationship) who may be affected by the order must be the paramount consideration.

Court Order

46. (1) A court may make an order granting a ᐱᐱᐱᐱᐱᐱᐱ (survivor) exclusive occupation of a ᐃᐱᐱᐱᐱᐱᐱᐱ ᐃᐱᐱᐱᐱᐱᐱᐱ (family home) that is not ᐃᐱᐱᐱᐱ-owned, and reasonable access to that home, subject to any conditions set out in section 47, and for any period that the court determines is reasonable in the circumstances.

(2) Pending the determination of an application under subsection (1), the court may make an interim order to the same effect as an order under subsection (1).

Content of Order

47. An order under section 46 may contain provisions requiring any or all of the following:

- (a) the ᐱᐱᐱᐱᐱᐱᐱ (survivor) to preserve the condition of the ᐃᐱᐱᐱᐱᐱᐱᐱ ᐃᐱᐱᐱᐱᐱᐱᐱ (family home);
- (b) any specified person, whether or not that person holds an interest in or to the ᐃᐱᐱᐱᐱᐱᐱᐱ ᐃᐱᐱᐱᐱᐱᐱᐱ (family home) to vacate it immediately, or within a specified period, and prohibiting them from re-entering the home;
- (c) the executor of the will, the administrator of the estate, or the holder of an interest in or to the ᐃᐱᐱᐱᐱᐱᐱᐱ ᐃᐱᐱᐱᐱᐱᐱᐱ (family home) to pay for all or part of the repair and maintenance of the ᐃᐱᐱᐱᐱᐱᐱᐱ ᐃᐱᐱᐱᐱᐱᐱᐱ (family home) and of other liabilities arising in respect of it; or
- (d) any other condition the court considers is just and appropriate in the circumstances.

Considerations

48. (1) In making an order under section 46, the best interests of any ᐱᐱᐱᐱᐱᐱᐱ of the ᐱᐱᐱᐱᐱᐱᐱᐱ (child of the conjugal relationship) who may be affected by the order must be the paramount consideration.

(2) To determine what is in the best interests of a ᐱᐱᐱᐱᐱᐱᐱ (child), all of the ᐱᐱᐱᐱᐱᐱᐱᐱ (child's) rights, needs and circumstances must be considered, including the following:

- (a) the ᐱᐱᐱᐱᐱᐱᐱᐱ (child's) health and emotional well-being;
- (b) the ᐱᐱᐱᐱᐱᐱᐱᐱ (child's) views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the ᐱᐱᐱᐱᐱᐱᐱᐱ (child) and significant persons in the ᐱᐱᐱᐱᐱᐱᐱᐱᐱ (child's) life;
- (d) the history of the ᐱᐱᐱᐱᐱᐱᐱᐱᐱ (child's) care;

- (f) respecting the transfer of proceedings under this Law to or from the court; and
- (g) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Law.

Exercise of Power to Make ᐃᐃᐃᐃᐃᐃᐃᐃ (Rules)

97. The power to make ᐃᐃᐃᐃᐃᐃᐃᐃ (rules) conferred by section 96 on a competent authority must be exercised in the like manner and subject to the like terms and conditions, if any, as the power to make ᐃᐃᐃᐃᐃᐃᐃᐃ (rules) conferred on that authority by the laws of British Columbia.

Provincial Laws of Evidence

98. The laws of evidence of British Columbia, including the laws of proof of service of any document, apply to proceedings under this Law.

Continuation of Proceedings on Death of Party

99. When a ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner makes an application under Part V or VII and both ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouses) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partners or one of them dies before the application is disposed of, the application may be continued by or against the executor of the will or the administrator of the estate of the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (spouse) or ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (common-law) partner who dies.

Continuation of Application by ᐃᐃᐃᐃᐃᐃᐃᐃ (Survivor) after Death of Party

100. When a ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (survivor) makes an application under Part VIII and the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (survivor) dies before the application is disposed of, the application may be continued by the executor of the will or the administrator of the estate of the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (survivor).

Continuation of Application by Executor or Administrator after Death of Party

101. When an executor of a will or an administrator of an estate makes an application under Part VIII and the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (survivor) dies before the application is disposed of, the application may be continued against the executor of the will or the administrator of the estate of the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (survivor).

ᐃᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Council of ᐃᐃᐃᐃᐃᐃᐃᐃ) Power to Make Regulations

102. The ᐃᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Council of ᐃᐃᐃᐃᐃᐃᐃᐃ) may make regulations that the ᐃᐃᐃᐃᐃᐃᐃᐃᐃ ᐃᐃᐃᐃᐃᐃᐃᐃᐃ (Council of ᐃᐃᐃᐃᐃᐃᐃᐃ) considers necessary for carrying out the purposes and provisions of this Law, including regulations making ᐃᐃᐃᐃᐃᐃᐃᐃ (rules) that are

