

Matrimonial Property

MATRIMONIAL PROPERTY

The *Matrimonial Property Act* governs the division of assets on marriage breakdown. This Act applies to all married spouses and domestic partners, who have registered the Partnership. It does not apply to common-law spouses who have not married or registered their domestic partnership. Each spouse is entitled to request an equal division of the matrimonial assets. The matrimonial assets are the Matrimonial Home and all property that one or both spouses acquired during the marriage or brought into the marriage. Most assets are presumed to be matrimonial and divided equally.

ASSETS THAT ARE NOT MATRIMONIAL PROPERTY

Some assets are not matrimonial property, and therefore, not subject to division, but the onus is on the spouse to show that the asset is an excluded asset. These assets are:

1. Gifts, inheritances, trusts or settlements that one spouse receives from a 3rd party. These funds must not have been used or be intended for future use that benefits both spouses or the children.
2. Funds that compensate for damage or future care for an injury.
3. Insurance policy proceeds that are payable to one spouse.
4. Reasonable personal effects.
5. Business assets that are held for production of income or profit. It is possible to be compensated for direct and significant contributions to the business assets.
6. Property specifically excluded under marriage contract or separation agreement.
7. Property acquired after separation unless cohabitation is resumed.

UNEQUAL DIVISION OF ASSETS

In rare circumstances there may be an unequal division of the matrimonial assets. The court will consider the following factors:

1. The unreasonable impoverishment by either spouse of the matrimonial assets.
2. The amount of the debts and liabilities of each spouse and the circumstances in which they were incurred.
3. Marriage contract or separation agreement.
4. Length and time of cohabitation.
5. Date and manner of acquisition of the assets.
6. Effect of the assumption of housekeeping, child care or other domestic responsibilities on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset.
7. Contribution to education and career potential of the other spouse.
8. The needs of child not yet at the age of majority.
9. Contribution to the marriage and welfare of family.
10. Whether the value of the assets appreciated significantly.
11. Proceeds or awards intended to compensate for damage or provide for future costs.
12. Value of pension benefit that due to the separation, either party will lose the chance of acquiring.
13. Taxation consequences.

MATRIMONIAL HOME

The Matrimonial Home is the dwelling and property occupied by person spouse and family. There may be more than one. Each spouse has an equal right to possession of the Matrimonial Home. But the court may give exclusive possession to one spouse.

OTHER ITEMS OF PROPERTY

Air travel points are matrimonial property and subject to equal division.

Pensions are matrimonial property. A spouse or common law partner may receive up to ½ of the pension benefit earned during and before the marriage.

Early retirement and severance packages may be considered matrimonial property if the entitlement was acquired during the marriage.

RRSP's are divisible matrimonial property. If one spouse takes the entire RRSP it will be valued less the tax obligation and compensation will be provided to other spouse. The RRSP may also be divided using a tax-free roll over where each spouse will pay their own tax obligations.

VALUATION

All assets valued as the cash-in-hand value of the assets. So, for example, the matrimonial home is often valued by deducting the mortgage, real estate commission, legal fees and disbursements. Some assets are typically valued as of the date of separation; for example, cars, credit card debt, and bank accounts. Some assets are typically valued as of the date of agreement or court order; for example, real estate, mortgages, RRSP's and other investments.

SHORT MARRIAGES

In a marriage of short duration one party may be allowed to retain the assets they brought into the marriage. Often the assets acquired before the marriage will be divided unequally, while those acquired during the marriage will be divided equally.

The information in this brochure is of a general nature only and each situation brings with it its own particular facts. You should consult with an experienced family law lawyer for your own situation.

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