

DIVIDING YOUR PROPERTY AFTER SEPARATION

After separating, married spouses have the right to apply for an equalization of their respective net family properties under the Ontario *Family Law Act*.

A married spouse also has this right when the other spouse dies. On death, the surviving married spouse may elect to equalize family property instead of receiving any bequests left to him or her under the deceased's will.

Married Spouses Only

This right to equalize family property only applies to married spouses. Common-law spouses do not have this right. Common-law spouses may acquire rights to share property under other laws, but this is not automatic. Common-law spouses should speak to a family law lawyer to understand what rights, if any, they may have to share in each other's property acquired during their relationship.

Equal Shares

The Ontario *Family Law Act* presumes that married spouses share the financial benefits and responsibilities of a marriage equally. The law does not just look at the financial contributions made by each spouse to the property acquired during the marriage. The law assumes that the spouses made equal contributions during the marriage and, therefore, their property should be equally divided. The general rule is that the value of any property acquired during the marriage is divided equally, 50-50.

In exceptional and very limited circumstances, a spouse may apply for an unequal division of net family property. This will only occur in very unusual situations and is rarely applied by the Courts. For more information on whether this applies in your situation, you should speak to your family law lawyer.

How Is Property Equalized?

The general rule is that the value of any property acquired during the marriage is divided equally, 50-50. Each spouse is credited with the value of his or her property owned on the date of marriage. This is then deducted from the value of his or her property on the date of separation. The difference is the value of property that each accumulated during the marriage. This is called "net family property".

If one spouse has acquired more property than the other spouse during the marriage, he or she will owe the other one-half of the difference between their net family properties. This payment is called an "**equalization payment**" because it equalizes the values of property that each spouse acquired during the marriage.

Some Property is Treated Differently - The Matrimonial Home

The Ontario *Family Law Act* stipulates that, when a marriage ends, the full value of the matrimonial home at the date of separation must be shared even if one of the spouses owned the same home before marriage, received it as a gift, or inherited it. This is an exception to the general rule that provides that a spouse has the right to deduct the value of assets owned on the date of marriage or exclude assets acquired through a gift or inheritance.

The matrimonial home is the home that is ordinarily occupied by the spouses as their family residence. The family residence will be considered a matrimonial home even if it is owned by one spouse, in his or her sole name. It is also possible to have more than one matrimonial home. For example, family cottages are will often be considered matrimonial homes.

Other Exceptions to Property Sharing

Some property that a spouse owns at separation is not shared with the other spouse. This property is referred to as "**Excluded Property**" and is made up of the following:

1. Property, other than the matrimonial home, that was acquired by gift or inheritance from a third party after the date of marriage;
2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse's net family property;
3. Damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship;
4. Proceeds of a policy of life insurance that are payable on the death of the insured;
5. Property, other than the matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced; and
6. Property that the spouses have agreed by a domestic contract to not be included in the spouse's net family property.

Contracting Out of Property Sharing

Married spouses can opt out of the property sharing regime imposed by the Ontario *Family Law Act*. They can do this by entering into a marriage contract under which the spouses agree that they will not share property or that they will share property in a different manner. A family law lawyer should prepare the marriage contract in order to ensure that it is prepared properly.

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