Family law in Canada: division of assets

If you and your spouse are going through a separation or divorce, it can be a challenging time that requires many adjustments. There are also legal considerations that should be addressed, such as the division of your assets.



In dividing the matrimonial assets, provincial law tries to recognize the contribution made by each spouse to a marriage and provide an equitable resolution when a relationship ends. Since child care, household management and financial support are seen as the responsibilities of both spouses; both are entitled to an equal share of the matrimonial assets.

The law in your jurisdiction determines matrimonial assets that are subject to division. Depending on the jurisdiction, for example, items acquired by a spouse before the marriage may or may not be considered marital assets subject to division. There may also be exemptions from marital property such as inheritances, gifts, damage settlements, personal effects, etc.

In some jurisdictions, business assets are not matrimonial assets and are therefore not divisible. Where business assets are exempt, however, it may be possible for a court to award a share of business assets to a spouse, where that spouse has contributed work, money, management, operation or improvement of the business asset.

Normally, matrimonial assets are divided in equal shares. Where one spouse is given exclusive possession of the matrimonial home, the other spouse may receive half the value of the home on a division of assets, assuming the home is a fully divisible asset.

Pensions can be complicated to divide. Either person may apply to the Canada Pension Plan (CPP) for a division of pension benefits earned during the marriage. For more information concerning CPP, refer to the Government of Canada’s website.

How Property is Divided

When dividing assets, a determination is made of each spouse's net property, or what each person will keep after the breakdown of the relationship. The items included are land, houses, personal property (jewellery, clothing, vehicles), bank accounts and investments, pensions, RRSPs and business assets (depending on the jurisdiction).

Once values are determined for all assets by agreement, fair market value or appraisal, deductions are made for debts and liabilities, the value of property brought into the marriage (depending on the jurisdiction), gifts, damage settlements, inheritances and other assets that may be exempt from the definition of marital property. The difference is each spouse's net property. The amount of the lower net property is deducted from the higher net property. The difference is divided by two and paid by the higher net property spouse to the lower net property spouse.

Often there are several other assets that involve appraisals and complicated calculations to determine each person's net property. Disagreement over the worth of an asset, or whether it’s a marital asset, can impact the time involved in reaching an agreement and the divisible value of the item.

There may be instances where an unequal division of assets is ordered, for example:

- A gross disparity in net worth after a lengthy marriage
- Unequal division of a pension after a short marriage
- One spouse making a limited contribution to the marriage

- One spouse has provided substantial non-marital assets to the marriage (gift of money from a relative, damages settlement)

Equal division may not be equitable in a marriage of short duration. It's important to have sound legal advice to determine what constitutes a marital asset. No agreement about the division of assets should be made without the advice of a lawyer.

Family law has very important implications for spouses and their children before, during and after the marital relationship. There is no substitute for sound legal advice concerning legal matters with respect to the marital relationship, and they should not be dealt with without the advice of a lawyer with specific knowledge of family law.

There are numerous sources of information in each province both in terms of counselling and information concerning legal matters. Gather as much information as possible about the process and issues so that you can avoid disagreements and expense.

Before seeking a legal remedy, particularly in the case of a relationship, you may wish to consider other avenues and discuss the issue with a family counsellor, social worker, doctor or health professional.

Please note, this article is a general guide to certain laws applicable to family law in Canada. The information contained in this publication is given by way of general reference only, is not intended to provide legal advice, and is not to be relied upon in any factual situation as it does not cover all laws or regulations that may be applicable in all circumstances. No responsibility will be accepted by the authors or publishers for any inaccuracy, omission or statement which might prove to be misleading. You are advised to seek your own professional advice before proceeding to consider issues of family law in Canada.