

Key Legal Terms: Property Rights and Obligations of Married and Co-Habiting Partners

Family Law Act

The Ontario law that governs family issues including division of family property, child and spousal support, and Restraining Orders. Depending on the situation, it can apply to married spouses (opposite and same sex) and co-habiting partners.

Common law relationship

Partners who live together in a relationship but choose not to get legally married are sometimes called “common-law” spouses or partners. In Ontario, to be able to get spousal support as a “common-law” spouse, you must have lived together for at least three years or have a child together and have been in a relationship of some permanence. Ontario law that deals with division of family property does not apply to couples that did not get legally married. There are different definitions of “common-law” for other situations.

Property

Anything a person owns, such as a home, car, personal and household items, pensions, bank accounts and any other investments. Property also includes debts (a promise to pay back money that was borrowed), such as a mortgage on a house, a car lease and a loan.

Net Family Property

When married couples separate or divorce, each spouse is entitled to the equalization (equal sharing) of the increase in value of their family property during the marriage. To do this calculation, each spouse has to determine their own net family property, which is the total of the assets minus the debts for each spouse at the end of the marriage.

Equalization Payment

When married couples separate, the general rule is that spouses must equally share the value of any property that was gained during the marriage and which they still own at separation. After each spouse calculates their net family property, the one who has more will usually have to pay the other spouse some money, called an equalization payment.

Matrimonial Home

The matrimonial home is where your family had been regularly living at the time you separated. Most couples usually have only one matrimonial home. The matrimonial home must be included in the calculation of the equalization payment, no matter whose name is on the ownership papers or legal title of the property. Both spouses also have the right to live in the matrimonial home until they agree, or the Court orders, otherwise.

Exclusive Possession Order

When both spouses have the right to live in the matrimonial home, a Court can order that only one of them keeps that right, and can change the locks, because the other spouse is not allowed to live or go into the matrimonial home without permission. This order is called an Exclusive Possession Order. A Court will only make this order if one spouse has a good reason to be afraid of harm by the other spouse. The Court will also consider other things such as the impact on children, and whether there is somewhere else that the excluded spouse can live. An Exclusive Possession Order is usually for a set amount of time, until it is decided what will happen with the matrimonial home permanently. The Order does not change the rights that both spouses have to include the value of the matrimonial home in the calculation of how to equally share family property.

Domestic Contract

A Domestic Contract is a voluntary agreement between two people living in a family relationship. It can set out specific rights and responsibilities that both people are willing to follow. You can use a domestic contract to agree with your spouse or partner about what will happen during your relationship, as well as what will happen if your relationship ends. Marriage Contracts, Cohabitation Agreements (for unmarried partners), and Separation Agreements are different kinds of Domestic Contracts.