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How Property is Divided in Family Law

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How Property is Divided in Family Law

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

When you and your partner separate, you will have to divide your property. **Property** means anything you own, such as your homes, cars, personal and household items, pensions, bank accounts and any other investments. Property also includes debts.

FAMILY LAW FOR WOMEN IN ONTARIO

Property rights are totally different for people who are legally married and those who live common law. If you are living common law, you do not have the same property rights as women who are married.

If you are legally married, the law has rules about how to decide the value of family property and how to divide the property. The law sees marriage as an economic partnership. If your marriage ends, the family assets and debts that have built up during your marriage (**net family property**) must be divided equally. However, if you and your partner were not legally married, you will not automatically have the same rights.

HOW PROPERTY IS DIVIDED IN FAMILY LAW

How property is divided for married couples

The law assumes that each spouse has contributed equally to the relationship, financially and in other ways. When your marriage ends, the general rule is that you and your spouse should split your net family property equally, no matter who paid for it or whose name the property is in. Sharing family property means that you share both the value of the family's assets and the family's debts.

What is the process for dividing property?

The process of dividing family property is called **equalization**. There are two steps in the equalization process.

FAMILY LAW FOR WOMEN IN ONTARIO

Step 1: Calculate net family property

The first step in the process is that each of you calculates the value of your **net family property**.

To do this, each of you must make a list of your assets at the time you separated and total the value of the assets. From this amount, you deduct the value of:

- debts owing at separation
- the value of property that you brought into the marriage
- gifts you were given
- property you inherited
- damages for personal injury

If one of these assets was used to buy the family home, you cannot deduct the value of that asset from your net family property.

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This is because a married couple's family home is treated differently than all other assets.

The family home, or **matrimonial home**, is the home where your family mostly lived when you separated. If you own this home, each of you has the right to share in the value of the equity on the home. This is true no matter whose name is on the deed, even if one of you owned the home before your marriage. This is also true if the home was bought using gifts that one of you received during your marriage. The only time the value of the home would not be shared is if you and your spouse had signed an agreement (marriage contract) that says the home will be kept out of the equalization process.

FAMILY LAW FOR WOMEN IN ONTARIO

The value of some property can change over time. This can cause problems when trying to calculate net family property. To deal with these problems the law outlines what date should be used as the **valuation date**. It is usually the date that you and your spouse separated and knew you would not get back together.

Step 2: Share the family property equally

Once each of you has calculated your net family property, its value must be **equalized**. Each of you must tell the other your net family property. The spouse whose net family property is higher must pay the other spouse half of the difference between the two amounts. This is called an **equalization payment**.

HOW PROPERTY IS DIVIDED IN FAMILY LAW

In some cases, the court can order a different equalization payment if the equalization amount is unfair. For example, the court could order your spouse to pay more if he did not tell you about large debts he had when you were married, or if he got into major debt on purpose.

What rights do women in polygamous marriages have?

Polygamy is not legal in Canada. If you are married in a country where polygamy is legal, you may have some rights under family law, including the right to apply for an equalization of family property.

FAMILY LAW FOR WOMEN IN ONTARIO

How property is divided for common-law couples

Property rights are very different for people who choose to live common-law rather than getting married. Even though the law recognizes common-law relationships in many ways, the rules about dividing property do not apply to common-law couples.

Generally, each of you owns whatever property you brought into the relationship and whatever you bought while you were together. What can be more complicated is sorting out the increased value of property owned by just one common-law spouse.

If you and your partner lived in a common-law relationship, you do not have equal rights to the value of your matrimonial home. The home that you lived in as a couple belongs to the person whose name is on the title.

HOW PROPERTY IS DIVIDED IN FAMILY LAW

You and your common-law partner could write a cohabitation agreement to set out how you would deal with property and debts if you separate. If you do not have a cohabitation agreement and you can not agree about how to divide your property, either one of you can go to court. You can ask a judge to award you a share of what you bought as a couple, or a share of the amount that the property increased during the relationship.

To get this kind of award, you must be able to prove that you contributed to the accumulation or maintenance of the property. For example, you may get some money if you can prove that you paid some of the bills on your partner's home, or that you added to the value of his business by providing free labour.

FAMILY LAW FOR WOMEN IN ONTARIO

If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law Topics Available*

■ Working with Your Lawyer (ST)

1. Alternative Dispute Resolution and Family Law (ST 001)
2. Child Protection and Family Law (ST 002)
3. Child Support (ST 003)
4. Criminal and Family Law (ST 004)
5. Child Custody and Access (ST 005)
6. Domestic Contracts (ST 006)
7. Family Law Arbitration (ST 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ST 008)
9. Finding Help with your Family Law Problem (ST 009)

10. How Property is Divided in Family Law (ST 010)

11. Marriage and Divorce (ST 011)
12. Spousal Support (ST 012)

** This booklet is available in multiple formats. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*

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