

Separation and Divorce or Death of a Spouse

Property Division



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Introduction

When couples separate, the way their property is divided depends on whether or not they are legally married.

Married couples automatically share the value of their property if they separate or if one spouse dies. This is not true for common-law couples.

Married or common-law, does it make a difference?

In this booklet, “married” means a couple who had a legally recognized marriage ceremony.

Couples who live together as spouses, but have not legally married each other, are sometimes said to be living “common-law”. Living together for many years, having children together, or referring to each other as “husband”, “wife”, or “spouse” does not make them legally married to each other.

For most family law issues, it does not matter if you and your spouse were legally married or living common-law.

But when it comes to the rules about property, there are some important differences.

What is property?

Property includes everything you own, for example:

- your home and any other real estate,
- your car and other vehicles,
- personal items, such as clothing, jewellery, books, and CDs,
- household items, such as furniture, appliances, and electronic equipment,

- bank accounts, RRSPs, investments, insurance policies, pensions, and other financial assets, and
- any businesses.

Property division for married couples

The Family Law Act is the Ontario law that deals with the division of property for legally married couples. When a married couple separates, usually each spouse keeps their own property but they share any **increase** in the value of their property that happened during their marriage. Usually this means that one spouse must give the other spouse an “equalization payment”. This is explained in the next section starting below.

Usually a spouse’s behaviour does not affect how property is divided.

The time limit to make a claim for an equalization payment is **6 years** after the separation or **2 years** after a divorce, whichever is sooner. Sometimes a court will give an extension of time to make a claim.

Equalization

If a married couple separates, one spouse usually must pay the other spouse money called an “equalization payment”. There are two main steps to figuring out the amount of the equalization payment:

Step 1:

Each spouse must calculate his or her “net family property” (NFP). To do this, each spouse adds up the value of his or her property (less any debts) on the date of separation and subtracts the value of his or her property (less any debts) on the date of marriage. Here is an example:

How to calculate Net Family Property (NFP)



Spouse A

Now (Separation Date)	\$100,000
Then (Marriage Date)	\$20,000
Now – Then	\$80,000
So, NFP for Spouse A is \$80,000	



Spouse B

Now (Separation Date)	\$55,000
Then (Marriage Date)	\$25,000
Now – Then	\$30,000
So, NFP for Spouse B is \$30,000	

Step 2:

The spouse with the higher NFP then pays the other spouse half of the difference. This is the equalization payment. Here is an example:

How to calculate Equalization Payment

Spouse A		NFP		\$80,000
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Spouse B		NFP		\$30,000
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Spouse A – Spouse B		\$50,000
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\$50,000 divided in half = \$25,000

**Equalization Payment:
Spouse A pays \$25,000 to Spouse B**

Special rule for matrimonial homes:

A “matrimonial home” is a home where a married couple had been living together just before they separated. There can be more than one matrimonial home, for example, a cottage could be included.

When calculating a spouse's NFP, the value of his or her property on the date of marriage does **not** include any home that is a matrimonial home on the date of separation. This means if the same spouse still owns the home on the date of separation, his or her NFP will include the home's **entire value**, not just its change in value during the marriage. This can have a big effect on how much the equalization payment will be, or who must pay it.

It is hard to know in advance if a particular home will be considered a matrimonial home because a couple may not know where they will be living if and when they separate.

Special rule for gifts and inheritances:

Any gift or inheritance that a spouse received during the marriage is not usually included in their NFP calculation. But if the gift or inheritance was used to buy or help pay for a matrimonial home, it is included.

Property division for common-law couples

The rules about property division in the Family Law Act do not apply unless you are legally married. If you are in a common-law relationship, the property you bring into the relationship, plus any increase in its value, usually continues to belong to you alone. If you and your spouse separate, there is no automatic right to divide it or share in its value.

Anything you buy for yourself with your own money during the relationship and own in your name usually belongs only to you. Things that you and your spouse buy together during the relationship belong to you both jointly. If you separate, the things you own jointly will be divided or their value shared.

It is a good idea to keep receipts, registrations, and other proof of ownership in case there is any disagreement later about who something belongs to.

If you have contributed financially or in some other way to your spouse's property, you might be able to claim a share. For example, you might have done unpaid work at home so your spouse could do paid work, or you might have worked in a family business. A court would look at whether your spouse was "unjustly enriched" at your expense.

If you are awarded a share of your common-law spouse's property, the size of the share may be based



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on the size of your contribution or on how much your contribution increased the value of your spouse's property.

The family home

The rules about who gets to stay in the family home, and who can sell it, depend on whether you were married or in a common-law relationship.

Married couples

A "matrimonial home" is a home where a legally married couple had been living together at the time of their separation. They can have more than one matrimonial home, such as a cottage.

Each married spouse has an equal right to stay in the matrimonial home until it is sold or until there is a court order or agreement, even if the legal title to the property is only in one of their names. Neither spouse can sell or mortgage a matrimonial home without the other spouse's written permission.

Common-law couples

The rules for matrimonial homes do not apply to common-law spouses. A common-law spouse does not automatically have the right to stay in the family home if it is not in his or her name. If one common-law spouse owns the home they can sell or mortgage it without the other spouse's permission.

Debts

In both married and common-law relationships, you are usually responsible for repaying only your own debts, unless you have an agreement saying who is responsible for which debts.

But if you both signed a loan agreement, you are both responsible. This is true for any two people who sign a loan together, whether or not they are spouses. Either one of you can be held responsible for repaying the entire debt. Even if you did not benefit from the loan, you might have to repay the entire loan if the other person does not pay it.

In a legal marriage, debts are taken into account when each spouse's NFP is calculated (see [page 4](#)).

Written agreements

If you and your spouse want to make other arrangements for sharing property in case your relationship ends, you can make a "cohabitation agreement" (if you are living together common-law) or "marriage contract" (if you are legally married). In the agreement, you can clearly say how you want to arrange your finances during your relationship and how you want to deal with your property and debts if you separate.

Before making the agreement, you should each make a detailed and complete statement of your financial situation and consult separate lawyers.

To make the agreement legal, you both must sign it in front of a witness who must also sign. To change the agreement, you must do the same thing.

Usually the courts will not change or undo a cohabitation agreement or marriage contract if just one spouse wants to change it. But in some cases a court might do this if, for example, a spouse:

- did not tell the truth about their finances,
- was not able to understand the agreement, or
- was under too much pressure to sign the agreement.

Canada Pension Plan credits

The Canada Pension Plan (CPP) is a federal benefit plan for workers. Most workers and their employers make regular CPP contributions so that when the worker retires, or can no longer work because of disability, they can get a pension. The amount of this pension depends on the size of the contributions.

If a couple lived together for at least one year, the CPP pension credits that they both earned while they were together can be added up and then divided evenly between them if they separate. This is sometimes

called a credit split or a “Division of Unadjusted Pensionable Earnings” (DUPE). If you earned less than your spouse, this may help you qualify for a pension. Or, it might increase the amount of your pension if you already qualify.

Usually there is no time limit to apply for a DUPE if you were legally married. But if your spouse died after you separated and you did not get divorced, you must apply within 3 years after your spouse’s death.

If you were in a common-law relationship, you must apply within 4 years after separating unless both of you agree in writing to remove this time limit. Also, you must wait until you have been separated for at least one year, unless your spouse died in that first year after you separated.

What happens to property if one spouse dies?

The instructions you leave in your will should say who gets your property when you die. But if you have a legal obligation to support a child, a former spouse, or other dependants, your will must leave enough to take care of them. If it does not, they can go to court and ask for the will to be changed to give them support.

There are legal rules, called “intestacy” rules, that say who inherits if there is no will.

Inheritance: Married spouses

If you are legally married and your spouse dies leaving a will, you can choose whether to claim an equalization payment (see [pages 3 to 6](#)) or receive what was left to you in the will.

If your spouse dies without leaving a will, you can choose whether to claim an equalization payment or inherit your share according to the “intestacy” rules. These rules give married spouses and children the right to inherit property when there is no will.

Inheritance: Common-law spouses

Common-law spouses do not inherit any of their spouse’s property unless it was left to them in a will. If your common-law spouse dies without leaving a will, the intestacy rules will give their property to their children or other relatives, not to you. So if you are in a common-law relationship each of you must make a will if you want to choose what you want done with your property when you die.

Joint property

If your spouse dies, you usually become the sole owner of any money or property that you both owned jointly. This is true whether or not you were legally married. For example, you usually have the right to all the money in any joint bank account and you become the sole owner of any real estate that the two of you held in “joint tenancy”. This is not affected by a will or the intestacy rules.

In the same way, you would also inherit life insurance money and registered investments if you are listed as a “beneficiary” in the insurance policy or investment papers.

Benefits

There are some government benefits that you may be eligible for if your spouse dies.

CPP survivor's pension:

If your spouse made enough contributions, you may be entitled to a survivor's pension under the Canada Pension Plan (CPP). This is a monthly payment. You may qualify if, at the time of your spouse's death:

- you were legally married to them or you had been living with them for at least one year, **and**
- you were at least 35 years old (you can be younger if you have a disability or have dependent children living with you).

There is no time limit to apply. CPP will give you benefits for the months dating back to your spouse's death, but they will not go back more than one year before the date you apply.

CPP funeral and death expenses:

CPP also offers a one-time payment to help pay funeral and other expenses connected to a contributor's death. It goes to the person or people

who pay those expenses. This might be the person who administers the estate, or the surviving spouse, or next of kin.

To apply for any CPP benefit, contact Human Resources and Skills Development Canada at **1-800-277-9914** for an application package. You can also download the package from their website at www.hrsdc.gc.ca.

Compensation benefits:

Under Ontario law, you may also be entitled to other payments upon the death of your spouse, depending on the cause of death. If your spouse was killed on the job, you can apply for workers' compensation benefits. If they died as a result of someone else's criminal act, you can apply for criminal injuries compensation. Each type of compensation has different rules about who can qualify.

To find out more about workers' compensation benefits, contact the Workplace Safety and Insurance Board (WSIB) at **1-800-387-0750** or **416-344-1000** in the Toronto area. Or you can visit their website at www.wsib.on.ca.

To find out more about criminal injuries compensation, contact the Criminal Injuries Compensation Board (CICB) at **1-800-372-7463** or **416-326-2900** in the Toronto area. Or you can visit their website at www.cicb.gov.on.ca.

For more information and help, contact your community legal clinic. To find the community legal clinic nearest you, call Legal Aid Ontario toll-free at **1-800-668-8258** or **416-979-1446** in the Toronto area. Or you can visit their website at www.legalaid.on.ca.

Finding a lawyer

The Law Society of Upper Canada has a directory of all lawyers who are licensed to practice law in Ontario. Make sure the lawyer you hire has experience with family law. The Law Society also has a Directory of Certified Specialists who focus on family law.

The Law Society Referral Service can give you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. There is no charge for this referral service.

Visit the Law Society website at www.lsuc.on.ca and click on “**Find a Lawyer or Paralegal**”, or call them at:

Toll-free..... **1-800-268-8326**

Toronto area **416-947-3330**

What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario. Legal Aid Ontario helps low-income people get legal assistance through a broad range of services. You must be financially eligible to receive most of these

services. Call Legal Aid Ontario to find out if you are eligible. Legal Aid Ontario also offers many services over the phone. You do not have to meet any financial requirements for general information and referrals.

Visit their website at www.legalaid.on.ca or call them at:

Toll-free..... **1-800-668-8258**

Toll-free TTY **1-866-641-8867**

Toronto area (accepts collect calls).... **416-979-1446**

Toronto area TTY **416-598-8867**

Legal Aid Ontario offers the following family law services:

- **Family Law Information Centres**

The Ministry of the Attorney General has established a Family Law Information Centre in every courthouse that deals with family law. All of the Centres have free pamphlets on topics such as separation and divorce, court procedures, and family mediation. Many of the Centres have staff who can give information and make referrals to community agencies and legal services.

Advice lawyers from Legal Aid Ontario are available at some locations at certain hours. An advice lawyer can give general information on family law matters free of charge. If you are financially eligible, the advice lawyer may be able

to give you legal advice for your specific case. To find a Family Law Information Centre in your area, call Legal Aid Ontario.

- **Family Law Service Centres**

At Family Law Service Centres, if you are financially eligible, you can receive help with documents, legal representation, and referrals to other types of services. These centres are located in Toronto, North York, Newmarket, Brampton, Chatham, and Sarnia. It is important to use the centre in the region where your court case is located.

- **Family Law Offices**

There are two family law offices in Ontario: one in Ottawa, and one in Thunder Bay. If you are financially eligible, the lawyers and paralegals at these offices can help with issues including custody, access, support, child protection, and restraining orders.

- **Family duty counsel**

If you do not have a lawyer, duty counsel may be able to give you immediate advice about family law issues and basic court procedure. Services are available in most court locations in Ontario.

You must be financially eligible for duty counsel assistance. Duty counsel can give advice, speak to the court on your behalf, or help you negotiate a settlement.

- **Family Law Information Program**

The Family Law Information Program is an online resource available on the Legal Aid Ontario website. This program is designed to help you to make informed decisions about legal issues and practical family issues.

- **Summary legal advice**

You may be able to get free advice about your family law issue from a lawyer for up to 20 minutes. This service is only provided over the phone. You do not meet the lawyer in person. You must be financially eligible to receive summary legal advice. Call Legal Aid Ontario to find out if you are eligible.

- **The certificate program**

If you are financially eligible, you can apply for full representation for your case by a lawyer through Legal Aid Ontario's certificate program. Legal Aid Ontario provides certificates to cover the cost of lawyers. Certificates are reserved for the most serious legal matters, such as domestic violence, child protection, or complex family law cases. Your case must qualify to receive representation.

**This booklet gives only general information.
You should get legal advice about your own
situation.**

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