

Special situation for women who live on-reserve

The rules described above for the division of property are provincial laws. These laws do not apply to **real property** located on reserves.

Real property includes land held by you or your spouse as well as houses, sheds and anything else on the land. The law that deals with on-reserve property is called the *Indian Act*.

However, there is nothing in the *Indian Act* about dividing property between people when their relationship ends.

Because of this gap in the current law, women and children who live on-reserve have less protection under the law than families living off-reserve.

If you live on-reserve, you cannot ask the court to give you an order for temporary or permanent possession of the family home or for an order stopping your spouse from selling the land; two important rights for women who live off-reserve.

In terms of dividing family property when a relationship ends, the courts do not have the power to order the sale of your family home if it is located on-reserve.

After years of advocacy by many First Nations people and women's advocates, the government has committed to taking action to fill this legal gap.

Any change to the law will need to balance the rights of Aboriginal peoples to self-government with the equality rights of women and children under Canadian and Ontario family laws.

We call upon the earth, our planet home, with its beautiful depths and soaring heights, its vitality and abundance of life, and together we ask that it – Teach us and show us the way.

We call upon the mountains, the Cascades and the Olympics, the high green valleys and meadows filled with wild flowers, the snows that never melt, the summits of intense silence, and we ask that they – Teach us, and show us the way.

We call upon the waters that rim the earth, horizon to horizon, that flow in our rivers and streams, that fall upon our garden fields, and we ask that they – Teach us, and show us the way.

We call upon the forests, the great trees reaching strongly to the sky with earth in their roots and the heavens in their branches, the fir and the pine and the cedar, and we ask them to – Teach us, and show us the way.

We call upon the creatures of the fields and forests and the seas, our brothers and sisters the wolves and deer, the eagle and dove, the great whales and the dolphin, the beautiful Orca and salmon who share the Northwest home, and we ask them to – Teach us, and show us the way.

We call upon all those who have lived on this earth, our ancestors and our friends, who dreamed the best for future generations, and upon whose lives our lives are built, and with thanksgiving, we call upon them to – Teach us, and show us the way.

And lastly, we call upon all that we hold most sacred, the presence and power of the Great Spirit of love and truth which flows through all the universe, to be with us to – Teach us, and show us the way.

Chinook prayer ceremony

How Property is Divided in Family Law



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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.

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 right.

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 valuing and dividing family property is called **equalization**. There are two steps in the equalization process.

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 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. 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.

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, the value of your property 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**.

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.

"We see the changes of day and night - the seasons, the stars, the moon, the sun. Anyone must know it is the work of someone more powerful than man."

- Chased-By-Bears

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 equally do not apply to common-law couples. Generally, each of you own 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.

You and your common-law partner could write a cohabitation agreement to set out how you would deal with property and debts if you of 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 courts also look at what arrangements already exist. This is called the **status quo**. If the child's living arrangement is working well, the court will not usually make big changes.

Parents are not the only people who can apply for custody and access. The law says that **any person** can apply. Often, extended family members such as grandparents, step-parents or aunts apply to the court. No matter who applies, the court will consider the best interests of the child.

Case Scenario:

After 10 years of marriage, Joe and Beverley decide to separate. They own a truck, a car, a boat and a house plus all the furniture in it. They have 2 children, April (9 years) and May (7 years)

The law assumes both Joe and Beverly contributed equally to the relationship, financially and in other ways. When the marriage ends, the property will be split equally. That means the loan for the truck (debts) is the responsibility of both partners too. Between them, Joe and Bev have come to an agreement on the division of the property. She will take the car and the furniture.

Joe will take the truck and will continue to make the payments and will take the boat, too. They felt the value of the car and furniture was equal to the value of the truck and boat. Because they still owe a lot on the house, it is sold and the money that comes from the sale of the house is divided between Joe and Bev.

There is not much to divide after paying the lawyer and real estate fees. They also go to court make arrangements for custody and access to the children. Because Joe and Bev are both good parents they are given joint custody.