

FAQs - Dividing Property & Sharing Debt

What types of assets are considered matrimonial property?

Assets acquired during the marriage are usually considered matrimonial property, regardless of who named as the legal owner of the asset.

What property gets divided?

If you are married, everything you own (together or in separate names) is divided between the two of you.

Is all property divided equally?

Usually, matrimonial property is divided equally between the parties. Some property may be exempt and would not be considered matrimonial property. Examples might include

- a) Property acquired prior to the marriage;
- b) An inheritance
- c) A gift from a third party to only one of the spouses
- d) Settlement funds from a personal injury claim.

Please contact our office should you have any questions about matrimonial property or exemptions.

Can I take all of the money in the joint chequing account?

This is usually not recommended. The money in the joint bank is matrimonial property which means that both parties are entitled to an equal share of those funds. Taking all of the money from the joint chequing account will likely cause unnecessary conflict and may prolong your case

Can I take money out of the joint Line of Credit?

Any funds taken by you from the joint Line of Credit will be attributed to you when the matrimonial property division is finalized.

Can I continue to use my credit card?

You can continue to use your credit card; however you should be conservative in your purchases. You do not want to be criticized as dissipating matrimonial property. You should only use your credit cards to make the type of purchases you made prior to separation.

How can I get my name off the mortgage, credit cards or car loan?

The easiest way to get your name off the mortgage, credit cards or car loan is by reaching an Agreement with your spouse. Starting a Divorce action by itself does not release you from liability for these debts. A Divorce and Property Agreement can be used to resolve the issues of matrimonial property, including debt. For each debt, the loan or debt obligation usually has to be re-financed for the lending institution to release you from liability. If you reach an Agreement, you and your spouse will agree as to how to divide the debts and who is responsible for each debt, depending on the division of assets.

If my spouse goes bankrupt, am I responsible for the joint debts

Yes. Unfortunately, when one spouse declares bankruptcy, the joint debts fall on the other spouse. The only way to avoid responsibility for the joint debts at that point is to make a settlement proposal to the lenders, or to declare bankruptcy along with the other spouse. This only applies to joint debts.

How do I claim a share of property that is outside of the Province of Alberta?

Alberta courts do not have jurisdiction to deal with property that is located outside of the Province of Alberta. However, if the majority of the matrimonial property is owned in Alberta, the Courts can take into account the value of the property owned outside of Alberta to determine an equal division of matrimonial property (Example: Spouse "A" keeps the vacation cottage in Ontario; Spouse "B" gets a greater share of the property located in Alberta)

I received an inheritance during the marriage. Do I get to keep this money?

You will need to prove that the money you inherited (or the asset purchased with that inheritance still exists). If your inheritance money was put in joint names with your spouse, you will not be able to claim the full amount of the inheritance as an exemption from matrimonial property division.

Can I get back the money that my parents gave us?

If the money given by your parents was a gift to both you and your spouse, you will not be able to get the money back. However, if the gift from your parents was to you

alone, you may be able to claim this gift as being exempt from matrimonial property division. If the money was a loan from your parents to you, you are expected to repay this loan as a matrimonial debt.

Do I get a share of my spouse's pension?

Pensions acquired during the marriage are considered matrimonial property. You and your spouse would each be entitled to a share of the other's pension that accumulated during the years of the marriage.