



## PROPERTY DIVISION ON MARRIAGE BREAKDOWN

Many new family law clients have misconceptions about the rules for property division on marital breakdown. We hope the following summary assists our clients and potential clients in understanding their rights and obligations in that regard.

### Common Law Spouses

There is a misconception that after three years, there arise property rights among unmarried spouses. Simply put, common law spouses do have potential SUPPORT claims against each other, but NOT PROPERTY claims. There is some judge-made law applying to long-standing relationships, but in the usual case, this law of "constructive trust" does not apply.

### Division of Net Family Property

Property claims between married spouses in Ontario are dealt with under Ontario's Family Law Act. Since 1986 the regime for property division on separation has been called a division of net family property (NFP). This is a "debtor-creditor" type of scheme. You value and add up the NFP of each spouse on the date of separation (the valuation date), and then the spouse with the greater NFP must pay to the other spouse one half of the difference between their NFP totals--resulting effectively in an equalization.

### Typical Scenario: Jim and Margaret

Jim and Margaret married in 1980 and separated on January 1, 2001. At the time of marriage Jim had no assets to speak of, but Margaret had \$50,000 in Canada Savings Bonds, which she retains. They are now worth \$200,000. During the marriage, Jim contributed to his pension at work, they bought and paid for a jointly owned house, now worth \$200,000. Jim has a 1998 Buick worth \$10,000 on the date of separation, and the family van is in Margaret's name. It was valued at \$20,000 on January 1, 2001, but had an outstanding vendor's lien from the car dealer of \$10,000.

### A Pension is Property

Pension owners do not like to think of it this way, but their pension has a value. The value of the pension earned during the marriage must be included in their NFP. Jim and his lawyer must obtain detailed information about his pension, have it valued (as of the date of separation) by an actuary, and include that value in Jim's NFP. That figure in our scenario is, say, \$40,000.

### Jim's Net Family Property

#### Adding up Jim's NFP:

- 1/2 interest in house: \$100,000.00
- Buick vehicle \$10,000.00
- Pension \$40,000.00
- Total \$150,000.00

#### Deductions from Net Family Property

Before moving on to Margaret's property, we stop to consider the allowed deductions from NFP. These include the value of:

- gifts or inheritances received during marriage
- property owned on the date of marriage
- debts/liabilities on the valuation date

### Margaret's Net Family Property

#### Adding up Margaret's NFP:

- 1/2 interest in house \$100,000.00
- Canada Savings Bonds \$200,000.00
- family van \$20,000.00
- LESS: CSB's at marriage (\$50,000.00)
- LESS: debt against van (\$10,000.00)
- Total \$260,000.00

### Equalization Payment

Margaret must pay Jim 1/2 of the difference of \$110,000.00, that is, \$55,000, so that they both end up with \$205,000. Note they still jointly own the house, which they can sell or deal with at any time.

### Consult a Lawyer

There are many issues relating to a division of property which we cannot, of course, deal with in this context. Greg McConnell and Stephen Fleury at our firm are all experienced family law practitioners. Please feel free to call any one of us for a consultation in regard to these issues.