

Get Married and Get Half the House!



By Brian Madigan LL.B.

That's what happens under Ontario's *Family Law Act*. It may not be exactly the official story line, but that is the actual effect of the law.

If Bill marries Brenda, and she already has a house, if they both move into it as a married couple and they were to divorce, then Bill's gets half the property. Some will say no, he only gets one half of the increase in value since the day they got married. That's true for any family property, but for the matrimonial home, there are special rules.

So, let's have a look at the application of the legislation in the circumstances. Earlier, we considered the case of Bill and Brenda. This time, we are going to consider exactly the same case, with one notable exception. Brenda has a \$200,000 home that she lives in that was left to her when her parents died. She meets Bill and they get married. Bill does not have a lot of money, so he moves in with Brenda. The marriage is of short duration. At six months, Bill moves out and sues for divorce. The home hasn't gone up in value, it's still worth \$200,000.

And, then we'll consider one further scenario. It goes up to \$300,000 by the time of the separation.

Really, there are just a few choices:

- 1) Bill gets nothing,
- 2) Bill gets one half the increase in value, \$50,000,
- 3) Bill gets one half of the total, being \$100,000 (1st scenario),
- 4) Bill gets one half of the total being \$150,000 (2nd scenario).

What do you think is fair?

I can tell you the law is quite clear, and it's been that way since 1978, so, it's not that new, it will be 30 years old this coming March.

Original Example

The best way to understand the calculation is to look at an example of the calculation. Let's consider the circumstance of Brenda and Bill. When they get married, Brenda has assets of \$50,000 and liabilities of \$10,000; Bill has \$25,000 in assets and \$5,000 in debts.

A few years later when they separate, Brenda has assets of \$120,000, and liabilities of \$20,000, and Bill has \$70,000 in assets and \$10,000 in liabilities. Let's go through the calculations and see how the formula works.

Brenda Date of Marriage

Value of Assets: \$ 50,000.00
LESS Value of debts \$ 10,000.00

Date of marriage net worth \$ 40,000.00

Brenda Date of Separation

Value of Assets \$ 120,000.00
LESS Value of Debts \$ 20,000.00

Separation Date Net Worth \$ 100,000.00

Increase in value of Brenda's property during marriage

Date of Separation net worth. \$ 100,000.00
LESS Date of Marriage net worth \$ 40,000.00

Brenda's NFP \$ 60,000.00

Bill Date of Marriage

Value of Assets: \$ 25,000.00
LESS Value of debts \$ 5,000.00

Date of marriage Net Worth \$ 20,000.00

Bill Date of Separation

Value of Assets \$ 70,000.00
LESS Value of Debts \$ 10,000.00

Date of Separation Net Worth \$ 60,000.00

Increase in value of Bill's Property During Marriage

Valuation Date net worth \$ 60,000.00
LESS Date of Marriage net worth \$ 20,000.00

Bill's NFP \$ 40,000.00

The *Family Law Act* says that each spouse should have an equal NFP. Therefore the party with the higher NFP (Brenda) will make a payment to the spouse with

the lower NFP (Bill) equal to one-half the difference in their Net Family Properties.

The difference in the Net Family Properties is:

Brenda's NFP \$ 60,000.00

Bill's NFP \$ 40,000.00

Difference \$ 20,000.00

One half the difference \$ 10,000.00

So, Brenda will pay Bill \$10,000 and then their respective NFP's will be equalized. Once the payment is made, both spouses will leave with one half of the net profits made by both of them during the marriage, that is, \$50,000.

Some Provisions from the *Family Law Act*

Net family property (NFP)

“net family property” means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,

(a) the spouse's debts and other liabilities, and

(b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, calculated as of the date of the marriage;

So, the notable point right here is that the matrimonial home cannot be deducted going into the marriage. If you still have it on the valuation date, then it's still considered to be an asset of yours.

And, what is the valuation date? It is the date, the couple split up, by any one of the following:

- 1) separation,
- 2) divorce,
- 3) declaration of nullity of marriage,
- 4) application for improvident depletion of family assets
- 5) one day before death of one of the spouses.

In fact, it is the earliest of such dates.

Now, the only other matter to be considered is whether a matrimonial home, if you have one when you get married is included or excluded from family property.

So, here's the list of excluded properties:

Excluded property

(2) The value of the following property that a spouse owns on the valuation date does not form part of the spouse's net family property:

- 1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.**
- 2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse's net family property.**
- 3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.**
- 4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the Insurance Act, that are payable on the death of the life insured.**
- 5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.**
- 6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse's net family property. R.S.O. 1990, c. F.3, s. 4 (2); 2004, c. 31, Sched. 38, s. 2 (1).**

You may as well have a look at the law in its entirety, simply because most people don't believe it.

You will notice in paragraph 1 above, that the matrimonial home was specifically excluded as an exception, even if it was a gift. So, it will be included as family property. You might consider paragraph 6, but, for the purposes of the following example, we are considering the case of Brenda and Bill.

Example with Matrimonial Home

So, let's get back to our example.

Brenda Date of Marriage

Value of Assets: \$ 50,000.00
House \$200,000.00
LESS Value of debts \$ 10,000.00

Date of marriage net worth \$ 240,000.00

Brenda Date of Separation

Value of Assets \$ 120,000.00

House: \$200,000.00

LESS Value of Debts \$ 20,000.00

Separation Date Net Worth \$ 300,000.00

Increase in value of Brenda's property during marriage

Date of Separation net worth. \$ 300,000.00

LESS Date of Marriage net worth \$ 40,000.00

Brenda's NFP \$ 260,000.00

Bill Date of Marriage

Value of Assets: \$ 25,000.00

LESS Value of debts \$ 5,000.00

Date of marriage Net Worth \$ 20,000.00

Bill Date of Separation

Value of Assets \$ 70,000.00

LESS Value of Debts \$ 10,000.00

Date of Separation Net Worth \$ 60,000.00

Increase in value of Bill's Property During Marriage

Valuation Date net worth \$ 60,000.00

LESS Date of Marriage net worth \$ 20,000.00

Bill's NFP \$ 40,000.00

The *Family Law Act* says that each spouse should have an equal NFP. Therefore the party with the higher NFP (Brenda) will make a payment to the spouse with the lower NFP (Bill) equal to one-half the difference in their Net Family Properties.

The difference in the Net Family Properties is:

Brenda's NFP \$ 260,000.00

Bill's NFP \$ 40,000.00

Difference \$ 220,000.00

One half the difference \$ 110,000.00

So, Brenda will pay Bill \$110,000 and then their respective NFP's will be equalized. Once the payment is made, both spouses will leave with one half of the net profits made by both of them during the marriage, that is, \$50,000, and one half of the value of the home namely \$100,000.

In the next example, where the value goes up to \$300,000, Bill gets one half of the increase in the same way as any other property.

Let's go back to our questions and possible answers:

Again, here are the choices:

- 1) Bill gets nothing, (incorrect)
- 2) Bill gets one half the increase in value, \$50,000, (incorrect)
- 3) Bill gets one half of the total, being \$100,000 (1st scenario), (correct)
- 4) Bill gets one half of the total being \$150,000 (2nd scenario). (correct)

So, whether you like it or not, whether you agree with it or not, you had better be aware that this is the way the Act works. And while some might argue that technically Bill did not receive half of the matrimonial home, he did receive one half of the value of the matrimonial home.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*