

Net Family Property Defined

By Brian Madigan LL.B.



The *Family Law Act* deals with family issues. It focuses upon the partnership created between parties when they choose to live together in a conjugal relationship. At first, it deals with support obligations that arise after a couple have lived together for a certain time.

For unmarried couples, the primary issue is support. For married couples the issue is support and the division of property. The Act also deals with the protection of the family after one of the parties has died.

The general scheme of the Act is to ensure that both parties equally share in the mutual profits made by both of them during the time they were together. Insurance proceeds, settlements from personal injury lawsuits and inheritances do not form part of the family property.

The matrimonial home has its own place in the legislation and is treated differently than other property.

The Act deals with married couples when it refers to the matrimonial home and the concept of family property.

While the Act deals with certain support obligations that arise in conjugal relationships, there is no property division unless the couple is actually married.

What is included in Family Property?

Virtually all property that is owned by either party during the marriage will qualify, both real and personal property. The interest can be by way of trusteeship or power of attorney. Here, the restriction is that the spouse would have the ability to control the asset to their own benefit. If truly the assets are for the benefit of another person, then this will not be family property. This precludes one of the parties to a marriage holding all their assets “in trust” for themselves, thereby circumventing the purpose and intent of the legislation.

In addition, the interest in the property may be remote, that is, it may be contingent on some future event, it may be vested, or it may fall in some time in the future, but whatever it is, it is still family property. The prime examples are insurance benefits and pension plans.

What is not Family Property?

The Act actually considers that certain property should be kept separate and not really become part of the family assets:

- 1) gifts from third parties,
- 2) inherited property from third parties,
- 3) income on the gift or inheritance if the third party so declared,
- 4) damages for personal injuries,
- 5) life insurance proceeds,
- 6) converted property from any of the above,
- 7) property that parties agree is to be excluded by agreement.

When it comes to the matrimonial home, even in this section there are some special rules. Both #1 and #6 are subject to the matrimonial home exception. If a parent leaves a matrimonial home to a child, then it will not be excluded from the definition of family property. Also, if excluded property of whatever kind or nature is converted into a matrimonial home, then it will lose its excluded status. So, if \$20,000 from a personal injury settlement is placed in a bank deposit, then converted into shares, later converted into bonds; it can still be traced and it is excluded. But, if at anytime, the money is used to renovate the kitchen, it loses its excluded status.

The Concept of Net Family Property

Here is the definition that appears in the Act:

Section 4(1) “net family property” means the value of all the property, except property described in subsection (2) (note: that is the excluded property mentioned above), 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;

The Equalization Payment

When it comes to the division of property there are two main circumstances giving rise to a division of property, divorce and death. Here’s what the Act says:

Equalization of net family properties

Divorce, etc.

5. (1) When a divorce is granted or a marriage is declared a nullity, or when the spouses are separated and there is no reasonable prospect that they will resume cohabitation, the spouse whose net family property is the lesser of the two net family properties is entitled to one-half the difference between them.

Death of spouse

(2) When a spouse dies, if the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to one-half the difference between them.

So, basically the concept is that the couple will share equally the net increase in value of all their assets and share equally, to a point all the losses while they were married.

When I say to a point, there is another provision in the Act which says that a person's net family property cannot be less than zero. So, no negative numbers here. All this means is that if your total assets are negative, ie. you owe \$100,000 and are about to go bankrupt, you don't get topped up first. Your spouse who has \$300,000 in assets only owes you \$150,000, that is one half of their total, not an additional \$50,000 to account for your negative situation.

Calculating the Payment

The first step in calculating the equalization payment is to calculate the net value of a spouse's property as of the date of marriage and the date of separation.

- 1) You add up the value of a spouse's assets at the date of marriage and subtract the spouse's debts as of that date. This provides a net worth as of the date of marriage.
- 2) Then, add the value of the spouse's assets as of the date of separation and subtract the liabilities on the separation date. This will provide a net worth as of the separation date.
- 3) Then, subtract the marriage date net worth from the separation date net worth and the result will show a spouse's net worth increase during the period of the marriage. This final figure is the spouse's Net Family Property or NFP.
- 4) The same calculation is then undertaken concerning the other spouse.
- 5) The spouse with the higher NFP owes the spouse with the lower NFP an amount that equalizes the two; this is called an "equalization payment," and it is technically "one-half the difference between them".

And, you will probably have noticed that a very important factor is the matrimonial home. It is not excluded unless it was mentioned in a agreement (ie. a pre-nuptial agreement). So, it would be split 50/50, even after a few days of marriage.

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